

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson (SBN 257074)
rclarkson@clarksonlawfirm.com
Shireen M. Clarkson (SBN 237882)
sclarkson@clarksonlawfirm.com
Katherine A. Bruce (SBN 288694)
kbruce@clarksonlawfirm.com
Kelsey J. Elling (SBN 337915)
kelling@clarksonlawfirm.com
Yana A. Hart (SBN 306499)
yhart@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, California 90265
Tel: (213) 788-4050
Fax: (213) 788-4070

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

TARA FARRELL, HENLY VELARDE, and
DOUGLAS WELLS, individually and on behalf
of all others similarly situated,

Plaintiff(s),

v.

NEW MILLENNIUM CONCEPTS, LTD,

Defendant(s).

Case No.:

CLASS ACTION COMPLAINT

1. Breach of Express Warranty
2. Breach of Implied Warranty of Merchantability
3. Unjust Enrichment/Restitution
4. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
5. Violation of False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
6. Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)

JURY TRIAL DEMAND

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TABLE OF CONTENTS

Page No.

COMPLAINT1

I. NATURE OF THE ACTION1

II. JURISDICTION4

III. VENUE4

IV. PARTIES5

 A. Plaintiff5

 B. Defendant.....8

V. FACTUAL ALLEGATIONS19

 A. Background19

 B. The Challenged Representations.....20

 A) Purification Representations20

 a) Systems’ Uniform Purification Representations on Packaging21

 B) Contaminant Reduction Representations22

 b) Purification Element’s Uniform Purification Representation and
Contaminant Reduction Fine Print on Packaging22

 C) Longevity Representations.....26

 C. Defendant & Authorized Agents’ Websites26

 A) Defendant NMCL’s Website26

 B) Defendant NMCL’s Amazon Storefront.....28

 D. The Challenged Representations Are False, Misleading, and Deceptive42

 A) ANSI Accredited Laboratory IAMPO’s Test Results44

 B) Activated Carbon Filter Design53

 C) Viruses/Bacteria Water Treatment Design53

 E. Defendant Misled Plaintiff and Reasonable Consumers, who relied on the Material
and False Challenged Representations to Their Detriment.....54

 F. The Products Are Substantially Similar.....55

G.	Inadequate Remedy at Law.....	56
VI.	CLASS ACTION ALLEGATIONS	59
VII.	FIRST CAUSE OF ACTION	62
	Breach of Express Warranty	
VIII.	SECOND CAUSE OF ACTION	63.
	Breach of Implied Warranty of Merchantability	
IX.	THIRD CAUSE OF ACTION	65
	Unjust Enrichment/Restitution	
X.	FOURTH CAUSE OF ACTION	67
	Violation of California Unfair Competition Law (“UCL” (Cal. Bus. & Prof. Code §§ 17200, et seq.)	
A.	“Unfair” Prong.....	69
B.	“Fraudulent” Prong	71
C.	“Unlawful” Prong	71
XI.	FIFTH CAUSE OF ACTION	75
	Violation of California False Advertising Law (“FAL”) (Cal. Bus. & Prof. Code §§ 17500, et seq.)	
XII.	SIXTH CAUSE OF ACTION	77
	Violation of Consumers Legal Remedies Act (“CLRA”) (Cal. Civ. Code §§ 1750, et seq.)	
XIII.	PRAYER FOR RELIEF	80
	DEMAND FOR JURY TRIAL.....	82

COMPLAINT

1. Plaintiffs Tara Farrell (“**Farrell**” and/or “**Plaintiff**”), Henly Velarde (“**Velarde**” and/or “**Plaintiff**”), and Douglas Wells (“**Wells**” and/or “**Plaintiff**”) (collectively and individually, “**Plaintiff(s)**”), individually and on behalf of all others similarly situated, as more fully described herein (the “**Class**” and/or “**Class Members**”), bring(s) this class action against Defendant(s) New Millennium Concepts, LTD (“**Defendant**” and/or “**NMCL**”), and allege(s) the following based upon information and belief, except where otherwise expressly stated as based upon personal knowledge:

I.

NATURE OF THE ACTION

2. **The Scheme.** This case is the “Erin Brockovich” of consumer goods. It is the story of a sinister corporation selling dirty drinking water to an unsuspecting, vulnerable group of consumers desperately in need of safe, clean drinking water. Defendant falsely and misleadingly advertises the Berkey water purification systems (which use filters called Berkey Black Purification Elements) as water “purifiers” that last for 3,000 gallons of water per filter. The products, however, fail to “purify” water and fail to eliminate or dramatically reduce contaminants to the extent advertised, let alone for 3,000 gallons. Shockingly, the filters fail (to reduce hazardous contaminants) within the first 1 gallon to 100 gallons at abysmal rates, far below any fine print or obscure minimal standards. Consumers throughout California and the United States purchase these water purification systems for their purported efficacy only to be swindled out of millions of dollars annually, all while putting themselves and their families in grave danger. A water purification



BLACK BERKEY® PURIFICATION ELEMENTS

Black Berkey® Purification Elements are powerful water purifiers, they are not simple filters. They are powerful enough to purify both contaminated municipal tap water as well as untreated, questionable water from harsh sources such as lakes, rivers, streams and ponds.

Berkey® systems equipped with Black Berkey® Purification Elements remove greater than 99.999% of viruses and greater than 99.9999% of pathogenic bacteria, while also removing or dramatically reducing protozoa, trihalomethanes, inorganic minerals, heavy metals, pharmaceuticals, pesticides, VOCs, petroleum products, perfluorinated chemicals, rust, silt, sediment and radiologicals.

Two Black Berkey® Purification Elements in a Berkey® system will purify approximately 6,000 gallons of water before replacement is recommended.

1 system that does not purify water is not only worthless, but it also denies thousands of people and
 2 their families the fundamental right to clean and safe drinking water. Defendant preys upon people
 3 living in disaster stricken or polluted areas because Defendant knows they, in particular, need clean
 4 drinking water. Defendant targets these worthless systems to cancer survivors and
 5 environmentalists, because Defendant knows they are particularly concerned with clean drinking
 6 water and pollutants in the environment. Safe and affordable access to clean water is an
 7 internationally recognized and fundamental human right; the lack of which has devastating effects
 8 on health, dignity, and the prosperity of billions of people, as well as significant consequences for
 9 the realization of other basic human rights. As a result of Defendant's fraudulent marketing scheme,
 10 tens or hundreds of thousands, if not millions, of defrauded consumers and their children and
 11 relatives are drinking unclean and unsafe water, foregoing water filtration systems that actually
 12 work, and paying hundreds of dollars for what amounts to nothing more than an empty can or plastic
 13 bottle.

14 3. **The Products.** The Berkey water purification system is a gravity-fed water filter
 15 system in a canister that has two chambers. Unfiltered water is placed into the top chamber, which
 16 has one or more Black Berkey® Purification Elements (the "**Purification Elements**") installed.
 17 The water passes through the Purification Elements from the top chamber into the bottom chamber,
 18 where "purified" water is dispensed. The Purification Elements are composed of activated carbon
 19 particles that contaminants in water, as it passes through, may attach to the surface of the carbon
 20 particles. The Berkey water purification system come in different sizes: Travel Berkey® System
 21 (1.5 gal) ("**Travel Berkey**"), Big Berkey® System (2.25 gal) ("**Big Berkey**"), Berkey Light®
 22 System (2.75 gal) ("**Light Berkey**"), Royal Berkey® System (3.25 gal) ("**Royal Berkey**"), Imperial
 23 Berkey® System (4.5 gal) ("**Imperial Berkey**"), and Crown Berkey® System (6 gal) ("**Crown**
 24 **Berkey**") (collectively, the "**Systems**"). The Systems use the Purification Elements for water
 25 purification purposes. Defendant also sold the following accessories and parts for the System and
 26 Purification elements that serve no beneficial or functional purpose unless the Systems and
 27 Purification elements comport with the Challenged Representations: Berkey Stainless Steel™
 28 Spigot, Berkey Base (For Stainless Steel Berkey® Systems), Black Berkey Primer™, 7.5" Sight

Glass™ Spigot, 10” Berkey Sight Glass™ Spigot, 13” Berkey Sight Glass Spigot, Berkey Base™ (Berkey Light System Options), and Berkey Maintenance Kit (collectively, the “**Accessories**”. The Systems, Purification Elements, and Accessories are jointly referred to as the “**Products**” herein.



Big Berkey® System



Royal Berkey® System



Imperial Berkey® System



Crown Berkey™ System



Travel Berkey® System



Berkey Light® System

4. **Challenged Advertising Claims & Warranties.** Contrary to the Products’ advertising claims and express warranties, and as explained in detail below, Defendant makes the following false representations: (1) the Systems and Purification Elements are water “purification” systems or water “purifiers” (the “**Purification Representation**”), even though they do not filter water into “pure” water (H₂O); (2) the Systems and Purification Elements “remove” contaminants and/or “dramatically” or “greatly” reduce contaminants (the “**Contaminant-Reduction Representation(s)**”), even they fail to reduce contaminants as advertised in fine print on the box of the Purification Elements (ranging from 80% to 99.9999% reduction or below detectable limits according to the type of contaminant); and (3) the Systems and Purification Elements purify and/or filter water for 3,000 gallons per Purification Element (the “**Longevity Representation**”), even

though they neither purify nor remove or dramatically or greatly reduce contaminants 1 to 100 gallons (collectively, the “**Challenged Representation(s)**”, “**Challenged Warranty(ies)**” and/or “**Challenged Advertising Claims**”). As the Systems and Purification Elements do not perform their singular purpose to purify or filter water, let alone for 3,000 gallons, they lack efficacy, making these products and their Accessories worthless.

5. **Causes of Action & Relief.** Plaintiff brings this putative class action against Defendant to represent a California Subclass and a National Class (defined *infra*) of similarly situated consumers misled into purchasing the Products in breach of express warranties and implied warranties of merchantability; violation of California Consumer Protection Statutes, including the Unfair Competition Law (“UCL”, codified at Cal. Bus. & Prof. Code §§ 17200, *et seq.*), False Advertising Law (“FAL”, codified at Cal. Bus. & Prof. Code §§ 17500, *et seq.*), and Consumers Legal Remedies Act (“CLRA”, codified at Cal. Civ. Code §§ 1750, *et seq.*); and to the Unjust Enrichment of Defendant. Plaintiff(s)’ primary litigation objective(s) include: obtaining restitution and damages, to the extent permissible and consistent with the law as set forth below; and/or obtaining injunctive relief to stop Defendant(s)’s unlawful false, deceptive, and misleading representations regarding the Products.

II.

JURISDICTION

6. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

III.

VENUE

7. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to Plaintiff(s)’s claims occurred in this District. In addition, Plaintiff(s) purchased the unlawful Product(s) in this District, Defendant(s) delivered the unlawful

Product(s) to this District, and Defendant(s) marketed, advertised, and sold the Product(s) within this District.

IV.

PARTIES

A. Plaintiff

8. **Plaintiff Tara Farrell.** The following is alleged based upon personal knowledge: (1) Plaintiff Tara Farrell (“**Plaintiff**” and/or “**Farrell**”) is a resident of Sacramento, California. (2) In or around approximately October 2019, Plaintiff Farrell purchased the Berkey Travel with the Purification Elements for approximately \$269.00 from Defendant’s Amazon storefront on Amazon.com. (3) In making the purchase, Plaintiff Farrell relied on the Challenged Representations regarding the Products’ contaminant-removal and longevity—namely, that the Products purify water; entirely eliminate and/or greatly or dramatically reduce contaminants from water; and/or do so for 3,000 gallons per Purification Element—in deciding to purchase the Products. (4) At the time of the purchase, Plaintiff Farrell did not know that the Products’ aforementioned Challenged Representations were false. (5) If Plaintiff Farrell had known that the Products did not, as advertised and warranted, purify water; entirely eliminate and/or greatly or dramatically reduce contaminants from water; and/or do so for 3,000 gallons per Purification Element, Plaintiff Farrell would not have purchased the Products at the advertised price. (6) Following the purchase and to-date, Plaintiff Farrell has continued to see the Products advertised and warranted for sale with the Challenged Representations. (7) Plaintiff Farrell would like to purchase the Products again if and only if they complied with their Challenged Representations—i.e., if they, as Defendant advertises and warrants them, purify water; entirely, dramatically, and/or greatly remove contaminants; and do so for 3,000 gallons per Purification Element—despite the fact that the Products have been previously marred by false advertising and warranties concerning the Challenged Representations. (8) Plaintiff Farrell does not have any specialized background, education, training, experience, knowledge, or sophistication in understanding the design and manufacture of water filter and purification systems, such as the Products. (9) Plaintiff Farrell has no way of knowing whether the Products conform to the Challenged Representations and perform as advertised and warranted, without either first

1 purchasing the Products and having them tested or relying on Defendant's Challenged
2 Representations.

3 9. **Plaintiff Henly Velarde.** The following is alleged based upon personal knowledge:
4 (1) Plaintiff Henly Velarde ("**Plaintiff**" and/or "**Velarde**") is a resident of Moreno Valley,
5 California. (2) In or around approximately May 2020, Plaintiff Velarde purchased the Berkey Travel
6 with the Purification Elements for approximately \$224.00 from one of Defendant's authorized
7 distributors, www.berkeywaterfilter.com. (3) In making the purchase, Plaintiff Velarde relied on
8 the Challenged Representations regarding the Products' contaminant-removal and longevity—
9 namely, that the Products purify water; entirely eliminate and/or greatly or dramatically reduce
10 contaminants from water; and/or do so for 3,000 gallons per Purification Element—in deciding to
11 purchase the Products. (4) At the time of the purchase, Plaintiff Velarde did not know that the
12 Products' aforementioned Challenged Representations were false. (5) If Plaintiff Farrell had known
13 that the Products did not, as advertised and warranted, purify water; entirely eliminate and/or greatly
14 or dramatically reduce contaminants from water; and/or do so for 3,000 gallons per Purification
15 Element, Plaintiff Velarde would not have purchased the Products at the advertised price. (6)
16 Following the purchase and to-date, Plaintiff Velarde has continued to see the Products advertised
17 and warranted for sale with the Challenged Representations. (7) Plaintiff Velarde would like to
18 purchase the Products again if and only if they complied with their Challenged Representations—
19 i.e., if they, as Defendant advertises and warrants them, purify water; entirely, dramatically, and/or
20 greatly remove contaminants; and do so for 3,000 gallons per Purification Element—despite the fact
21 that the Products have been previously marred by false advertising and warranties concerning the
22 Challenged Representations. (8) Plaintiff Velarde does not have any specialized background,
23 education, training, experience, knowledge, or sophistication in understanding the design and
24 manufacture of water filter and purification systems, such as the Products. (9) Plaintiff Velarde has
25 no way of knowing whether the Products conform to the Challenged Representations and perform
26 as advertised and warranted, without either first purchasing the Products and having them tested or
27 relying on Defendant's Challenged Representations.

28 10. **Plaintiff Douglas Wells.** The following is alleged based upon personal knowledge:

(1) Plaintiff Douglas Wells (“**Plaintiff**” and/or “**Wells**”) is a resident of Los Angeles, California. (2) In or around approximately January 2020, Plaintiff Wells purchased the Purification Elements for approximately \$128.00 from Defendant’s Amazon storefront on Amazon.com. (3) In making the purchase, Plaintiff Wells relied on the Challenged Representations regarding the Products’ contaminant-removal and longevity—namely, that the Products purify water; entirely eliminate and/or greatly or dramatically reduce contaminants from water; and/or do so for 3,000 gallons per Purification Element—in deciding to purchase the Products. (4) At the time of the purchase, Plaintiff Wells did not know that the Products’ aforementioned Challenged Representations were false. (5) If Plaintiff Wells had known that the Products did not, as advertised and warranted, purify water; entirely eliminate and/or greatly or dramatically reduce contaminants from water; and/or do so for 3,000 gallons per Purification Element, Plaintiff Wells would not have purchased the Products at the advertised price. (6) Following the purchase and to-date, Plaintiff Wells has continued to see the Products advertised and warranted for sale with the Challenged Representations. (7) Plaintiff Wells would like to purchase the Products again if and only if they complied with their Challenged Representations—i.e., if they, as Defendant advertises and warrants them, purify water; entirely, dramatically, and/or greatly remove contaminants; and do so for 3,000 gallons per Purification Element—despite the fact that the Products have been previously marred by false advertising and warranties concerning the Challenged Representations. (8) Plaintiff Wells does not have any specialized background, education, training, experience, knowledge, or sophistication in understanding the design and manufacture of water filter and purification systems, such as the Products. (9) Plaintiff Wells has no way of knowing whether the Products conform to the Challenged Representations and perform as advertised and warranted, without either first purchasing the Products and having them tested or relying on Defendant’s Challenged Representations.

11. **Plaintiffs Future Harm.** Plaintiff(s) would continue to purchase the Products in the future if the Products, as Defendant(s) continue(s) to advertise and warrant them, truly purify water; entirely eliminate and/or greatly or dramatically reduce contaminants from water; and/or do so for 3,000 gallons per Purification Element. Further, Plaintiff(s) is an (are) average consumer(s)

who is(are) not sophisticated in the design and manufacture of water filter and purification systems, such as the Products. Since Plaintiff(s) would like to purchase the Products again to obtain the benefits of the Challenged Representations that Defendant(s) continue(s) to use—despite the fact that the Products were once marred by false advertising or warranties—Plaintiff(s) would likely and reasonably, but incorrectly, assume the Products are true to their Challenged Representations. Accordingly, Plaintiff(s) is at risk of reasonably, but incorrectly, assuming that Defendant(s) has fixed the Products such that Plaintiff(s) may buy them again, believing they are no longer falsely advertised and warranted and instead believing that they comply with the Challenged Representations. In this regard, Plaintiff(s) is(are) currently and in the future deprived of the ability to rely on the Challenged Representations to purchase the Products.

B. Defendant

12. **Defendant NMCL.** At all relevant times, Defendant New Millennium Concepts LTD (“NMCL” and/or “**Defendant(s)**”) is a Texas corporation with its principal place of business in Arlington, Texas. Defendant manufactured, marketed, advertised, and sold the Products to consumers, including Plaintiff(s), throughout California and the United States. The unfair, unlawful, deceptive, and misleading Challenged Representations of the Products were prepared, approved, ratified, and used by Defendant to sell the Products, as well as market, advertise, and warrant the Products for sale.

13. **Authorized Agents.** At all relevant times, Defendant NMCL either directly sold to consumers or effectuated sales to consumers through its agents called Authorized Sellers or Authorized Dealers (hereinafter the “**Authorized Agents**”). In all relevant respects, NMCL authorized, approved, and/or ratified, as well as controlled, the Authorized Agents’ use of the Challenged Representations to sell the Products on its behalf. Additionally, NMCL provided and controlled the Authorized Agents’ content and language of the Challenged Representations. In this way, NMCL was the Authorized Agents principal and employer for purposes of selling the Products using the Challenged Representations and, accordingly, NMCL is liable for the Authorized Agents’ conduct in selling the Products using the Challenged Representations.

14. **Personal Jurisdiction—Minimal Contacts.** Defendant(s) has (have) purposefully

1 availed itself (themselves) of the United States and, in particular, this forum state such that the
 2 exercise of personal jurisdiction over Defendant(s) is reasonable and comports with notions of fair
 3 play and substantial justice. This forum has an interest in adjudicating the issues, claims, defenses,
 4 and disputes set forth in this complaint, including the enforcement of laws that govern
 5 Defendant(s)'s conduct within this forum, as well as the protection of individuals within this forum
 6 from the conduct and resultant injuries and harm that have occurred herein. The Plaintiff(s) have
 7 filed this action in this forum to serve their convenience and to obtain effective relief, including, but
 8 not limited to, an injunction that will change Defendant(s)'s practices within this forum, and the
 9 enforcement of laws that govern Defendant(s)'s conduct within this forum. Adjudication of this
 10 action within this particular forum serves the efficient resolution of the controversies set forth
 11 herein. This forum, in particular, has an interest in furthering social policies implicated in this
 12 action.

13 a. **Personal Jurisdiction—Specific Jurisdiction.** The claims of Plaintiffs(s)
 14 and putative members of the Class arise out of and/or relate to Defendant(s)'s contacts with the
 15 United States and, in particular, this forum state. There is an affiliation between this forum and the
 16 underlying activity or occurrence (that gives rise to the controversy asserted herein), which
 17 principally took place within this forum, and, therefore, the controversy is subject to regulation by
 18 this forum. Further, Defendant(s) has (have) systematically served the market for the Products in
 19 this forum. Plaintiff(s)'s injuries and harm, occurring within this forum, have occurred as a result
 20 of Defendant(s)'s conduct within this forum.

21 1) **Plaintiffs and California Subclass Members' Transactions.**
 22 Plaintiff(s), like all California Subclass members, read, reviewed, and relied upon Defendant(s)'s
 23 Challenged Representations, in California, in deciding to buy the Products. Plaintiff(s) and
 24 California consumers were residents of California and located in California when they viewed the
 25 Challenged Representations and purchased the Products. Plaintiff(s) and California Subclass
 26 members used credit/debit cards with an account holder billing address in California and/or used
 27 shipping addresses in California. Defendant(s) shipped the Products to Plaintiff(s) and California
 28 Subclass members in California. At all relevant times, Defendant NMCL knew the foregoing facts

1 and, therefore, Defendant NMCL knowingly and deliberately marketed and sold the Products to
2 Plaintiffs and consumers in California.

3 2) **Defendant(s)'s Exclusive Control and Deliberate Online/Digital**
4 **Advertising with Challenged Representations.** Defendant(s) knowingly, intentionally, and
5 deliberately advertised the Products, using the Challenged Representations, in California. Defendant
6 NMCL used, at a minimum, online and digital advertising mediums to disseminate the Challenged
7 Representations in California, including Defendant NMCL's exclusively controlled websites at
8 www.berkeywater.com and www.berkeybynmcl.com; Defendant's exclusively controlled NMCL's
9 Amazon Store Front at [https://www.amazon.com/stores/Berkey/Homepage/page/8EE04EF4-7F75-](https://www.amazon.com/stores/Berkey/Homepage/page/8EE04EF4-7F75-4F90-A1D7-14A90B704ABA)
10 [4F90-A1D7-14A90B704ABA](https://www.amazon.com/stores/Berkey/Homepage/page/8EE04EF4-7F75-4F90-A1D7-14A90B704ABA); Defendant NMCL's exclusively controlled social media advertising
11 platforms, including: Defendant NMCL's Instagram account at
12 <https://www.instagram.com/berkeybynmcl/?hl=en>; Defendant NMCL's Facebook account at
13 <https://www.facebook.com/BerkeyByNMCL/>; Defendant NMCL's YouTube channel at
14 <https://www.youtube.com/c/Berkeywater>; Defendant NMCL's Pinterest account at
15 <https://www.pinterest.com/BerkeyByNMCL/>; and Defendant NMCL's Twitter account at
16 <https://twitter.com/berkeybynmcl?lang=en>; among others. In so doing, Defendant NMCL had
17 access to the geographic location and demographic information of consumers who viewed or
18 interacted with these online websites and digital marketing vehicles. Accordingly, Defendant
19 NMCL knew and intended its digital advertising campaign, which included the Challenged
20 Representations Defendant NMCL drafted and approved, reached Californians and drove California
21 sales.

22 3) **Defendant(s)'s Exclusive Control and Deliberate Labeling &**
23 **Packaging to Include Challenged Representations.** Defendant(s) knowingly, intentionally, and
24 deliberately placed the Challenged Representations—specifically, the Purification Representation
25 and Contaminant Reduction Representation—on the Products' labels and packaging as part of its
26 intentional and deliberate marketing and advertising of the Products to motivate consumers to buy
27 them. Each and every consumer considering the Products for purchase, and buying the Products,
28 viewed and/or were exposed to the same material Challenged Representations on the Products'

1 labeling and packaging in deciding to buy the Products. Californians, among other non-residents,
 2 viewed the Products' labels and packaging containing the Challenged Representations in purchasing
 3 the Products in California and other states within the United States.

4 **4) Defendant(s)' Authorized Agents' California Brick & Mortar**
 5 **Stores.** Defendant NMCL maintains a website www.berkeywater.com where it provides a search
 6 engine for the public to locate physical stores within a specified radius of various zip codes or cities.
 7 See <https://support.berkeywater.com/find-authorized-berkey-dealers/store-locator/> ("Use the search
 8 tool below to see if there's a retail storefront stocking Berkey® Products in your area.") (last
 9 accessed 9/14/2021). A simple search for stores located near two major cities in the State of
 10 California, Los Angeles and San Francisco, reveal at least two brick and mortar store fronts for
 11 "LifeWest Book Store Life Chiropractic College West," in the City of Hayward, California, and
 12 "Biodynamic Wellness," in the City of Solana Beach, California. See also **Exhibit "9"** [NMCL's
 13 Store Locator Results]. Thus, according to Defendant NMCL's own website, Defendant NMCL
 14 knows that the Products are marketed and sold in the State of California, and Defendant NMCL has,
 15 purposefully and deliberately, established at least two Authorized Agents in physical retail stores
 16 within the State of California for the purpose of marketing and selling the Products.

17 **5) Defendant's Control and Deliberate Training of Resellers,**
 18 **Marketers & Authorized Agent to Use the Challenged Representations to Sell Products.**
 19 Defendant(s) knowingly, intentionally, and deliberately directed its marketing and advertising of
 20 the Products, which included the Challenged Representations, to the United States and, in particular,
 21 California through resellers, marketers, and Authorized Agents. The Challenged Representations
 22 were personally and specifically created by Defendant(s) for the deliberate and intentional purpose
 23 of creating a brand image of the Products consistent with the Challenged Representations to
 24 motivate consumers to buy the Products and generate sales. Defendant(s) trained resellers,
 25 marketers, and Authorized Agents to use the Challenged Representations to sell Products.
 26 Defendant(s) had the right to control the content of advertisements and exercised control over the
 27 content of advertisements that resellers, marketers, and Authorized Agents used to ensure the
 28 Challenged Representations were used in advertisements. Resellers, marketers, and Authorized

Agents used the Challenged Representations in advertising the Products to California, including various mediums such as online/digital, television, radio, email, in-store displays, and mail. Resellers, marketers, and Authorized Agents sold the Products, using the Challenged Representations, to Californians and other consumers who used billing and shipping information with California addresses. Defendant(s) had the right and exercised the right to access and review customer identifying information, including their addresses, and therefore knew or should have known that its/their resellers, marketers, and Authorized Agents sold Products to Californians. Defendant(s) knew or should have known, at all relevant times and for the past 10 years or more that resellers, marketers, and Authorized Agents were using the Challenged Representations in advertisements to Californians, as well as selling the Products to Californians.

a) **NMCL's Dealer Training & Recruitment Video.** Indeed, as early as August 18, 2015, Defendant NMCL posted a video on YouTube at <https://www.youtube.com/watch?v=1AlvjbX3LrE> (accessed 9/14/2021), entitled "Becoming an Authorized Berkey® Dealer," that appears to have remained available for viewing since that date, and that recruits and trains dealers and promotes the Products for resale. *See also Exhibit "8"* [NMCL's Authorized Dealer Video]. Defendant NMCL writes on this webpage regarding the video: "New Millennium Concepts, Ltd. is always considering partnering with the right people and organizations to retail the Berkey® line of products. Berkey® is an established brand that is sold and recognized worldwide. We value our growing dealer network and strive to support, develop and retain our dealers by promoting the Berkey® brand, making excellent products and keeping you, our customers, the center of our focus." *Id.* To recruit "Authorized Dealers" and provide some training for resale to consumers, Defendant NMCL's spokesperson in the video discusses: "Personalized Service & Attention," "No Maintaining Inventory," "Support Tools & Resources," "Online Ordering," steps to "Becoming a Berkey® Dealer," and a recap on some of the points made in the video to promote the Products and Defendant NMCL to resellers.

b) Personalized Service & Attention. With respect to "Personalized Service & Attention," Defendant NMCL states that "every dealer is assigned an experienced account manager to help grow their Berkey business." *See NMCL, Becoming an*

1 *Authorized Berkey Dealer*, at <https://www.youtube.com/watch?v=1AlvjbX3LrE> (accessed
2 9/14/2021). Thus, Defendant NMCL has assigned its employees to manage each reseller's account
3 to facilitate and foster their advertising and resale of the Products to consumers. In so doing,
4 Defendant NMCL has access to, participation in, and personalized knowledge regarding the
5 reseller's marketing messages and the sale of the Products to Californians and all consumers.

6 c) No Maintaining Inventory. Defendant NMCL, in promising
7 "No Maintaining Inventory," states: "No need to maintain inventory. We can drop ship for you,
8 directly to your customer, or you can ship your own products as you grow." *Id.* Thus, Defendant
9 NMCL ships the Products direct to consumers and is aware of their location, including the California
10 Subclass's location within the State of California.

11 d) Support Tools & Resources. Defendant NMCL promises
12 "Support Tools & Resources," stating: "We provide easy-to-use online tools that make it simple for
13 you to find answers to serve you and your customer. These include a product knowledge base,
14 exclusive company information, and pertinent dealer news and articles." *Id.* While discussing these
15 online tools and resources, the video displays an online software application. *Id.*

16 e) Promoted Features & Benefits of Berkey. First, with respect to
17 these Support Tools & Resources, the video displays a computer screen with a main title "Berkey
18 Benefits" and subtitle "Features and Benefits of Berkey Purification Systems," that lists several
19 categories and headlines, including, among others: (1) "HEALTHY . . . Why are the **Berkey®**
20 systems the benchmark in gravity fed water purification? It's simple—they remove viruses, harmful
21 pathogenic bacteria, cysts, parasites, unhealthy contaminants and impurities to below detectable
22 levels. . ."; (2) "POWERFUL . . . **Berkey®** systems can easily purify ordinary tap water, yet are
23 powerful enough to efficiently purify raw, untreated water from sources such as remote lakes and
24 streams. In the event of natural disasters and emergencies when treated water may not be available,
25 your **Berkey®** is essential."; (3) "ECONOMICAL . . . **Berkey®** systems are the most economical
26 water purification system you can own. The long life of the **Berkey®** Purification elements allows
27 you to enjoy purified water for about two cents per gallon. . . ." (which is consistent with the
28 Longevity Representation and likely explained if the secondary webpage is visited); (4) "PROVEN

1 . . . Our independent lab results speak for themselves. Click here to view how the test results for our
 2 Black **Berkey**® elements exceed expectation for gravity purification.” *Id.* at 1 min., 11 sec; *see also*
 3 **Exhibit “8”** [NMCL’s Authorized Dealer Video] at 1 min., 11 sec. In this way, Defendant NMCL
 4 reiterates the same marketing strategies, intentionally focusing on the Challenged Representations,
 5 to deliberately and purposefully promote the Products and the company to resellers, train them on
 6 how to sell Products to consumers, and recruit agents to its network of dealers throughout the nation,
 7 including, in particular, California.

8 f) Berkey Knowledge Base. The second webpage featured and
 9 displayed on the video with respect to Support Tools & Resources is entitled “About the Berkey
 10 FAQ Knowledge Base.” *Id.* at 1 min. 13 sec.; *see also* **Exhibit “8”** [NMCL’s Authorized Dealer
 11 Video] at 1 min. 13 sec. The depicted webpage explains: “The Knowledge base was created as a
 12 service tool for our visitors’ most frequently asked questions. Please use the search tool above, or
 13 the service categories list on the right side of the page to locate answers to your questions. . . .”; and
 14 further explains that, for unanswered questions, a link may be used to complete a form and submit
 15 it online to Defendant NMCL for a prompt response and consideration of including the question and
 16 answer in the Berkey Knowledge Base. *Id.* The same Berkey Knowledge Base webpage contains a
 17 list of “Popular Articles” that appear to be downloadable PDFs or linked webpages regarding the
 18 Purification Elements’ test results, specifications, storage and shelf-life information, among other
 19 matters, and “Latest Articles” that includes, among other matters, an article about a competitor’s
 20 recall of its products and an article entitled: “The Bigger Picture, drought concerns are larger than
 21 California in America.” *Id.* The same Berkey Knowledge Base webpage provides a search engine
 22 for dealers to search answers to frequently asked questions that auto-populates several suggested
 23 search terms or queries based on the words entered into the search engine. *Id.* at 1 min., 13 sec.; *id.*
 24 at 1 min., 15 sec.; *see also* **Exhibit “8”** [NMCL’s Authorized Dealer Video] at 1 min., 15 sec. The
 25 video depicts the search engine, when the phrase “what shou [sic.]” is entered, provides a list of
 26 suggested queries that includes, among others, “5 Things You Should Know About California’s
 27 Water Crisis.” *Id.* at 1 min. 15 sec.; *see also* **Exhibit “8”** [NMCL’s Authorized Dealer Video] at 1
 28 min. 15 sec. The video depicts a few more webpages from the Berkey Knowledge Base regarding

1 the removal mechanisms for the Products (“Berkey Secret”) and various article headlines and
 2 synopses. *Id.* at 1 min. 15 sec. to 23 sec. As such, Defendant NMCL not only provides marketing
 3 materials and information to dealers to resell Products to consumers, which includes the Challenged
 4 Representations that are a prominent and primary part of its advertising campaign, but Defendant
 5 NMCL explicitly targets California consumers for resellers, providing articles regarding the
 6 California water crisis and drought for the deliberate and intentional purpose of recruiting and
 7 training resellers to market and sell the Products to Californian consumers, including the California
 8 Subclass and Plaintiffs.

9 g) Online Ordering. With respect to the “Online Ordering” that
 10 Defendant NMCL promotes in its recruitment and training video for dealers, it emphasizes “the ease
 11 of placing your orders through our online ordering center,” and depicts an online ordering form that
 12 includes a question for each Product selected about the state of destination (specifically, “Is this
 13 item being shipped to Iowa”). *Id.* at 1 min., 23 to 28 sec.; *see also* **Exhibit “8”** [NMCL’s Authorized
 14 Dealer Video] at 1 min., 28 sec. In this way, Defendant NMCL not only provides a digital platform
 15 for resellers, including those in California, to place and fulfill orders, but Defendant NMCL has a
 16 demonstrated intent to steward Products to or away from certain states, such as Iowa, to ensure
 17 compliance with, or otherwise avoid violating, the laws of those states. Notwithstanding laws in the
 18 State of California that make the sale of home water treatment devices, such as the Products,
 19 unlawful for lack of registration and certification by California-approved labs, the online order
 20 portal depicted in the video does not require the reseller to disavow shipping the order to California
 21 in order to process the order. *Id.* at 1 min., 28 sec.; *see also* **Exhibit “8”** [NMCL’s Authorized
 22 Dealer Video] at 1 min. 28 sec.

23 h) Becoming a Berkey Dealer. Defendant NMCL explains in the
 24 recruitment and training video: “Becoming a Berkey® Dealer happens in three simple steps. One,
 25 sign your dealer agreement. Two, get your Berkey images. Three, place your initial order. To join
 26 our dealer network today, go to www.berkeywater.com.” *Id.* at 1 min., 29 to 44 sec. Thus, Defendant
 27 NMCL contracts with resellers to impose enforceable rights and obligations governing the resellers’
 28 marketing and sale of the Products. Additionally, Defendant NMCL provides product images and

content for advertising, which includes the Challenged Representations that are consistently and uniformly displayed on the Authorized Agents' websites. In this way, Defendant has the right to control, and exercised that control, over the Authorized Agents' use of the Challenged Representations to sell the Products throughout the United States and, in particular, in the State of California.

i) Video Recap. Defendant NMCL ends the recruitment and training video with a recap on the promotion, reiterating that the Products provide, among other things, the "Gold Standard in Personal Water Filtration/Purification"; "Purify Water for Less than 2 Cents per Gallon"; Purification Elements "Laboratory Tested to Exceed EPA and NSF Standards"; the "Most Powerful Gravity Fed Water Filters and Purifiers on the Market"; and "Experienced and Knowledgeable Customer Service." *Id.* at 1 min., 59 sec.; *see also* **Exhibit "8"** [NMCL's Authorized Dealer Video] at 1 min., 59 sec.

6) Based on the foregoing and a review of Defendant NMCL and the Authorized Agents' websites, Defendant(s) intended and directed resellers to disseminate, republish, incorporate, and otherwise use the Challenged Representations to advertise and sell the Products, including, but not limited to, republication on websites, in-store displays, and placement of the Products on shelves for purchase in stores, throughout the United States and in particular in California. As a result, Plaintiffs and the California Subclass were deceived into buying the Products based on the material and false Challenged Representations.

b. **Personal Jurisdiction—Stream of Commerce.** Defendant(s) injected the Products into the interstate stream of commerce and it was reasonably foreseeable that the Products would be sold or used in the United States and, in particular, this forum state. The regular and anticipated flow of Products have led them to be marketed in this forum. The Products reached this forum through the efforts of Defendant(s) to serve, directly or indirectly, the market for the Products within this forum; such efforts were intentionally and/or purposefully designed to serve this market and were of a character that gives rise to a reasonable anticipation that Defendant(s) would be hauled into court in this forum. The volume, value, and hazardous nature of the Products supports this forum's exercise of personal jurisdiction over Defendant(s).

1 1) Defendant(s) regularly advertised and sold the Products in California
2 such that the regular and anticipated flow of advertising and sales of the Products occurred in
3 California.

4 2) Defendant(s) designed the Products for the market in California. The
5 Products do not require electricity, an electrical outlet, or an adaptor that would not work in
6 California. The Products do not need to be connected to a plumbing line or plumbing system that
7 does not meet standard construction specifications in California. The Products, instead, are designed
8 to work with California water sources because the user need only fill the top chamber with the water
9 that he or she wishes to purify. Nothing about the Products or their advertising suggests that the
10 Products cannot be used, or their performance will be negatively affected by use, in California.
11 Rather, Defendant has intentionally targeted and promoted the Products' sale within the State of
12 California.

13 3) Defendant(s) advertised the Products in California. Defendant(s)
14 engaged in an advertising campaign in California. Defendant(s) advertised the Products, including
15 the Challenged Representations, online/digitally in California. Defendant(s) shipped Products
16 directly to California for sale to consumers as well as for resale by California resellers. Defendant(s)
17 shipped Products to resellers knowing that the resellers would sell the Products in California. The
18 Products' labels and packaging contain the Challenged Representations that Defendant(s) created
19 for the purpose of motivating consumers to buy the Product(s). Defendant(s) controlled the
20 advertising content to ensure the Challenged Representations were used in California marketing
21 campaigns.

22 4) Defendant(s) established channels for providing regular advice to
23 customers of the Products in California, as well as to service its warranties with Californian
24 consumers. Defendant(s) provides email, telephone, instant messenger channels, and online web
25 portals to Californians to provide customer support, including help with the Products, servicing
26 warranties, and to receive and provide advice to Californian consumers and resellers, in order to
27 market and sell the Products in California.

28 5) Defendant(s) marketed the Products through distributors, retailers, and

1 Authorized Agents who agreed to serve as sales agents in the United States and this forum state.

2 6) The volume, value, and hazardous nature of the Products supports the
 3 United States and this forum state's exercise of personal jurisdiction over Defendant(s). It is
 4 estimated that Defendant(s) sold at least one hundred thousand units of Products within the State of
 5 California over the past four years, totaling tens of millions, if not hundreds of millions, of dollars
 6 in sales of the Products over the past four years in the State of California. These sales are the result
 7 of the false and misleading Challenged Representations that have been a primary focal point of the
 8 Products' advertising. Californians, believing that they are buying water purifiers that entirely or
 9 dramatically remove contaminants for 3,000 gallons per Purification Element, are deceived into
 10 paying, on average, approximately \$200 per System for Products that do not provide purified water
 11 for the first gallon, let alone 3,000 gallons. Thus, Californians are drinking and using water that is
 12 not purified and exposing themselves to health and safety risks at a steep cost. Indeed, Defendant(s)
 13 intentionally prey(s) upon the vulnerable in Defendant NMCL's deliberate and well-developed and
 14 approved advertising campaigns to target, among others, disaster-stricken areas that have an
 15 interruption in access to safe and clean water, those in fear of the COVID-19 virus's transmission
 16 through water, and cancer survivors who have a particular interest in the eliminating dangerous and
 17 cancer-causing contaminants from their water. In so doing, Defendant(s) has(ve) not only defrauded
 18 thousands of Californians out of millions of dollars, but Defendant(s) has(ve) intentionally exploited
 19 vulnerable people and deliberately placed their health at risk.

20 15. **Personal Jurisdiction—General Jurisdiction.** Defendant(s)'s contacts with the
 21 United States and, in particular, this forum state have been so continuous and systematic as to render
 22 Defendant(s) essentially at home in this forum. Defendant(s) knowingly, intentionally, and
 23 deliberately marketed and sold the Products in California. Californians, having approximately ten
 24 percent (10%) of the United States' population and generally consisting of a greater majority of
 25 consumers for household goods similar to the Products, likely comprises more than ten percent
 26 (>10%) of the number of units sold in the United States, as well as generates likely more than ten
 27 percent (>10%) of revenues from the sale of the Products in the United States. In this way,
 28 Defendant(s), and in particular the manufacturer Defendant NMCL, continuously and

1 systematically defrauds the California marketplace, using the Challenged Representations to sell
 2 millions of dollars' worth of the Products. It is estimated that Defendant(s) sold at least one hundred
 3 thousand units of Products within the State of California over the past four years, totaling tens of
 4 millions, if not hundreds of millions, of dollars in sales of the Products over the past four years in
 5 the State of California. Additionally, at least two of Defendant NMCL's Authorized Sellers maintain
 6 brick and mortar stores within the State of California to market and sale the Products.

7 V.

8 FACTUAL ALLEGATIONS

9 **A. Background**

10 16. **Fundamental Human Right to Safe & Clean Water.** In 2010, the General
 11 Assembly of the United Nations recognized the fundamental human right to clean and safe water.¹
 12 The "lack of access to safe, sufficient and affordable water . . . has a devastating effect on the health,
 13 dignity and prosperity of billions of people, and has significant consequences for the realization of
 14 other human rights."² Numerous municipalities across the nation have likewise recognized the
 15 fundamental right to safe and clean water, including, for example, the California legislature. *See*
 16 Cal. Water Code § 106.3(a) (2012).

17 17. **The Market.** Consumers have poured billions of dollars into the filtered and purified
 18 water market. In 2018, the Global Market for home water filtration systems was valued at \$8.6
 19 billion and is expected to increase by 15.9% by 2025.³ Consumers have turned to filtered water in
 20 hopes of purifying their drinking water and removing contaminants for aesthetic (e.g., taste, odor,
 21 appearance) and health related reasons (elimination of harmful contaminants). As a result,
 22 companies, like Defendant, have scrambled to manufacture, distribute, and sell home water filtration
 23 and purification systems to gain market share. Indeed, Defendant targets particularly vulnerable
 24

25 ¹ United Nations, *Resolution Adopted by the General Assembly on 28 July 2010*,
https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292 (last visited Jan. 11,
 26 2021).

27 ² United Nations, *Human Rights to Water and Sanitation*, <https://www.unwater.org/water-facts/human-rights/> (last visited Jan. 11, 2021).

28 ³ *Home Water Filtration Unit Market Size, Share, and Trends Analysis Report By Product (RO*,
 ALLIED MARKET RESEARCH, June 2019, <https://www.alliedmarketresearch.com/water-purifier-market>
 (last visited Jan. 11, 2021).

consumer demographics who are likely to need, and be concerned about, the safety of their water, including disaster stricken areas where access to clean and safe drinking water has been disrupted; rural and metropolitan areas that do not have publicly available access to clean and safe drinking water either because constituents rely on well-water or their water tables and reservoirs have pollutants; and health-conscious people who, for example, are cancer survivors, fear the transmission of the COVID-19 virus in their water, or otherwise have an increased concern about water pollution.⁴

B. The Challenged Representations

18. Defendant manufactures, markets, promotes, advertises, and sells the Systems that utilize the same Purification Elements and Accessories under the “Berkey” brand name. To convince consumers that the Products are superior and effective water filter products that purify water, Defendant advertises them as water “purification” Products or water “purifiers”, that either purify water or otherwise entirely remove or “dramatically” or “greatly” reduce contaminants from water, for 3,000 gallons per Purification Element.

A) Purification Representations

19. **Purification Representations.** Defendant represents the Products as water “purification” systems, water “purifiers”, or products that will “purify” water (the “**Purification Representations**”) on the box of the Systems and Purification Elements and its websites. The Purification Representation is not only in the name of the trademarked Berkey Black “Purification” Element, but Defendant identifies the Systems with the Purification Representations on the box of each System in prominent, large, and bold font. Indeed, Defendant emphasizes on the box of each System that it purifies water, stating: “Fresh Clean Drinking Water Purified the Natural Way”. An exemplar System package that contains these Purification Representations is set forth immediately below and images for each System’s package are assembled and attached hereto as **Exhibit “1”** (Systems’ Box). The Purification Representations lead reasonable consumers, including Plaintiff, to believe that the Products will provide pure water (H₂O) or water otherwise free of contaminants

⁴ NMCL, *News*, <https://www.berkeywater.com/news/> (last visited Jan. 11, 2021); NMCL, *Berkey Blog*, <https://www.berkeybynmcl.com/blog/> (last visited Jan. 11, 2021).

when used as directed. However, the Purification Representations are false because the Products do not provide pure water (H₂O) or water free of contaminants when used as directed because the Products design—an activated carbon filter—cannot provide pure water (H₂O) or water free of contaminants and tests show it failed to remove contaminants as set forth more fully below.

a) Systems' Uniform Purification Representations on Packaging

20. Exemplar System Box Image:



See also Exhibit "1" (System Box Images).

1 B) Contaminant Reduction Representations

2 21. **Contaminant Reduction Representations.** On Defendant's websites, as set forth
 3 below, Defendant represents the Products as water purification systems that "remove or dramatically
 4 reduce" contaminants, or "remove or greatly reduce" contaminants. At times on the websites and
 5 uniformly on the box of each Purification Element, Defendant more precisely identifies the
 6 contaminants and their respective reduction rates to include: (1) viruses at greater than 99.999%, (2)
 7 pathogenic bacteria (and surrogates) at greater than 99.9999%, (3) pharmaceutical drugs at greater
 8 than 99.5%, (4) trihalomethanes at greater than 99.8%, (5) inorganic minerals at levels below lab
 9 detectable limits, (6) pesticides & (semi) volatile organic compounds at levels below lab detectable
 10 limits, (7) heavy metals (high & low pH levels) at levels ranging from greater than 80% to 99.9%,
 11 (8) radiological contaminants at levels below lab detectable limits, and (9) others at contaminants
 12 at levels of greater than 95% to 99.999%. Across all mediums, Defendant uniformly represents the
 13 Products as "removing or dramatically reducing" or "removing or greatly reducing" contaminants
 14 and, whenever specified, at a rate of at least greater than 80% (the "**Contaminant Reduction**
 15 **Representations**").

16 *b) Purification Element's Uniform Purification Representation and*
 17 *Contaminant Reduction Fine Print on Packaging*

18 22. **Black Berkey Purification Elements Box.** Each System sold comes with one or more
 19 Purification Elements. Each Purification Element comes in a box. The Purification Element box
 20 identifies the Product using the term "Purification" and provides more specificity on which
 21 contaminants are removed and the rate at which contaminants are removed or reduced, in bold, all
 22 capital letters, and underline font, as set forth in subparagraphs (1) to (9) immediately below. The
 23 box also provides, in smaller print, with no bold, no capitals, and no underline font, a highly
 24 technical explanation that is set forth in the footnotes corresponding to each subparagraph below.
 25 An exemplar image of the Purification Element's box is below and attached hereto as **Exhibit "2"**.

26 (1) **VIRUSES**⁵: >99.999%

27
 28

⁵ **Viruses** that are allegedly removed or reduced include: MS2 coliphage and FR coliphage.

(2) **PATHOGENIC BACTERIA (AND SURROGATES)**⁶: >99.9999%

(3) **PHARMACEUTICAL DRUGS**⁷: removed to >99.5%

(4) **TRihalOMETHANES**⁸: removed to >99.8%

(5) **INORGANIC MINERALS**⁹: removed to below lab detectable limits

(6) **PESTICIDES & (SEMI) VOLATILE ORGANIC COMPOUNDS (VOCs)**¹⁰:

⁶ **Bacteria** that are allegedly removed or reduced include: bacillus atrophaeus (anthrax surrogate), raoultella terrigena (pathogenic bacteria surrogate), and salmonella enterica.

⁷ **Pharmaceutical drugs** that are allegedly removed or reduced include: 4- tert-octylphenol, acetaminophen, bisphenol A (BPA), caffeine, ciprofloxacin, erythromycin, ibuprofen, naproxen sodium, primidone, progesterone, triclosan, trimethoprim, and many more.

⁸ **Trihalomethanes** that are allegedly removed or reduced include: bromodichloreomethane, bromoform, chloroform, and dibromochloromethane.

⁹ **Inorganic minerals** that are allegedly removed or reduced include: chloramine, chloride, chlorine residual, and free chlorine.

¹⁰ **Pesticides and VOCs** that are allegedly removed or reduced include: 1,1,1,2-Tetrachloroethane; TCA; 1,1,2,2-Tetrachloroethane; 1,1,2-Trichloroethane; 1,1,2-Trichlorotrifluoroethane; 1,1-DCA; 1,1-DCE; 1,1-Dichloropropene; 1,2,3-Trichlorobenzene; 1,2,3-Trichloropropane; 1,2,4-Trichlorobenzene; 1,2,4-Trimethylbenzene; DBCP; 1,2-Dibromoethane; CFC 123a; 1,2-Dichlorobenzene; 1,2-Dichlorobenzene-d4; 1,2-Dichloroethane; 1,2-Dichloropropane; 1,3,5-Trimethylbenzene; 1,3-Dichlorobenzene; 1,3-Dichloropropane; 1,4-Dichlorobenzene; 2,2-Dichloropropane; 2,4,5-T 2,4,5-TP(Silvex); 2,4-D; 2,4-DB; MEK; 2-Chlorotoluene; 2-Hexanone; 2-Methyl-2-propanol; 3,5-Dichlorobenzoic Acid; 3-Hydroxycarbufuran; 4-Bromofluorobenzene; 4-Chlorotoluene; 4-Isopropyltoluene; 4-Methyl-2-pentanone; 4-Nitrophenol; 4,4'-DDD; 4,4'-DDE; 4,4'-DDT; 5-Hydroxydicamba; Acetone; Acenaphthylene; Acifluorfen; Alachlor Aldicarb; Aldicarb Sulfone; Aldicarb Sulfoxide; Aldrin; alpha-chlordane; Ametryn; Anthracene; Aroclor; Atraton; Atrazine; Baygon; Bentazon; Benzene; Bromacil; Bromoacetic Acid; Bromobenzene; Bromochloromethane; Bromomethane; Butachlor; Butylate; Butylbenzylphthalate; Carbaryl; Carbofuran; Carbon Tetrachloride; Carboxin; Chloramben; Chlordane; Chloroacetic Acid; Chlorobenzene; Chlorobenzilate; Chloroethane; Chloromethane; Chloropropham; Chloropropane; cis-1,2-Dichloroethylene; cis-1,3-Dichloropropene; cis-Nonachlor; Cuclate; Dacthal; Dalapon; Diazinon; Dibromoacetic Acid; Dibromochloropropane; Dibromomethane; Dicamba; Dichloroacetic Acid; Dichlorodifluoromethane; Dichloromethane; Dichlorvos; Diclorprop; Dieldrin; Diethylphthalate; Dinoseb; Diphenamid; Disulfoton; Disulfoton Sulfone; Disulfoton Sulfoxide; Endrin; EPTC; Ethion; Ethylbenzene; EDB; Fenamiphos; Fenarimol; Fluorobenzene; Fluroide; gamma-Chlordane; Glyphosate; Halo acidic acids; CCC; Hexachlorobenzene; Heptachlor Epoxide; Hexachlorocyclopentadiene; Hexazinone; Isophorone; Cumene; Lindane; Merphons; Methiocarb; Methomyl; Methoxychlor; Methylocyclohexane-methane; MGK 264; Mevinphos; Metolachlor; Metribuzin; MTBE; Methyl Paraoxon; Molinate; Monochlorobenzene; m-Xylenes; Naphthalene; Napropamide; n-Butylbenzene; Norflurazon; n-Propylbenzene; Oxamyl; o-Xylene; Pebulate; Pentachlorophenol; Picloram; Stirofos; Styrel; Tebuthiuron; Terbacil; Terbufos; Terbutryn; tert-butylbenzene; PCE; THF; TCE; Thiobencarb; Toluene; Toxaphene; trans-1,2-Dichloroethylene; trans-1,3-Dichloropropene; trans-Nonachlor; Triadomefon; Tribromoacetic Acid; Trichloroacetic Acid; Trifuralin; Tricyclazole; CFC 11; Trichloroethylene; Vernolate; Vinyl Chloride; and many more.

Removed to below lab detectable limits

(7) **HEAVY METALS (HIGH & LOW pH LEVELS)**¹¹ [at levels ranging from greater than 80% to 99.9%]

(8) **RADIOLOGICAL CONTAMINATES** (sic.)¹² [reduced to levels that exceeded lab detection limits]

(9) **ALSO REMOVES OR REDUCES** [various other contaminants at levels ranging from 95% to 99.999%]¹³

The contaminants identified in subparagraphs (1) through (9), immediately above, are collectively referred to as “**Filtered Contaminants**” hereinafter.

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¹¹ **Heavy Metals** allegedly removed or reduced include: Aluminum: >99%; Antimony: >99.9%; Barium: >80%; Beryllium: >99.9%; Bismuth: >99.9%; Cadmium: >99.97%; Cobalt: >95%; Chromium: >99.9%; Chromium 6: >99.85%; Copper: >99.9%; Iron: >99.9%; Lead: >99.9%; Mercury: >99.9%; Molybdenum: >90%; Nickel: >99.9%; Vanadium: >87.5%; Zinc: >99.9%.

¹² **Radiological Contaminants** allegedly removed or reduced include: gross alpha emitters. Gross beta emitters, and uranium.

¹³ **Other contaminants** allegedly removed or reduced include: Arsenic (>99%); Escherichia coli (E Coli) (>99.999%); Fluorene (>99.9%); Manganese (>99.9%); MBAS (>96.67%); Nitrites (>95%); PCB’s (>99.9%); Per fluorinated Chemicals- PFC’s (PFOA, PFOS, and more) (>99.9%); Petroleum Products (.99.9%); Selenium (>99.9%); Thallium (>99.5%); Rust; Silt; Sediment; Turbidity; Foul Taste; and Odors.

23. Black Berkey Purification Element Box Product Image:



See also Exhibit "2" (Purification Element's Box).

1 C) Longevity Representations

2 24. **Longevity Representations.** Defendant represents the Products as water purification
 3 systems that purify water or remove/reduce contaminants from water, consistent with the
 4 Purification Representations and Contaminant Reduction Representations set forth above, for 3,000
 5 gallons per Purification Element (the “**Longevity Representation**”). For example, Defendant
 6 represents the Products on its website (Berkeywater.com) as “designed to purify approximately
 7 3,000 gallons of water before needing replacement; 2 elements in a Berkey System will purify
 8 approximately 6,000 gallons of water before replacement is recommended.”¹⁴ In reality, the
 9 Products fail to produce pure water (H₂O) consistent with the Purification Representations in any
 10 amount. The Products fail to purify or filter water consistent with the Contaminant Reduction
 11 Representations for 3,000 gallons per Purification Element.

12 25. **Challenged Representations.** The “**Challenged Representations**”, referenced
 13 above and below (throughout this complaint), collectively refer to the Purification Representations,
 14 Contaminant Reduction Representations, and Longevity Representations, defined in the paragraphs
 15 immediately above under section V. (Factual Allegations), subsection B. (The Challenged
 16 Representations).

17 C. **Defendant & Authorized Agents’ Websites**

18 A) Defendant NMCL’s Website

19 26. **Defendant NMCL’s Websites**¹⁵. In addition to the Challenged Representations on
 20 the box for the Systems and Purification Elements, Defendant NMCL has maintained two websites
 21 that advertise the Products at www.berkeywater.com and www.berkeybynmcl.com (last accessed
 22 Jan. 7, 2021). Defendant NMCL has approved, authorized, and/or ratified the content and their
 23 display on its websites and Defendant NMCL has otherwise maintained control over said content
 24 and display, including the uniform Purification, Contaminant-Reduction, and Longevity
 25 Representations regarding the Products set forth below.

26 ¹⁴ *Black Berkey® Purification Elements NSF*, BERKEY BY NMCL,
 27 <https://www.berkeywater.com/black-berkey-purification-elements/> (last visited Jan. 12, 2020).

28 ¹⁵ Berkey, **BERKEY WATER**, available at <https://www.berkeywater.com/> (last accessed Jan. 12, 2021); Berkey, **BERKEY BY NMCL**, available at <https://www.berkeybynmcl.com/> (last visited Jan. 12, 2021).

a. **Purification Representation & Contaminant-Reduction Representation:**

Defendant NMCL consistently identifies the Systems as “water purification systems” and/or “water purifiers” on the webpages dedicated to describing these Products.¹⁶ On the webpages dedicated to describing the Purification Elements, Defendant NMCL further consistently identifies them as “Black Berkey Purification Elements” that purify water and/or remove or dramatically reduce contaminants.¹⁷

b. **Longevity Representation:** Defendant NMCL consistently makes the Longevity Representation on the webpages dedicated to describing the Purification Elements—specifically, that the Purification Element purifies 3,000 gallons of water per element.¹⁸

¹⁶ **Black Berkey Purification Elements**, BERKEY BY NMCL, <https://www.berkeywater.com/black-berkey-purification-elements/> (last visited Jan. 12, 2021); **Berkey® Purifiers & Filters**, BERKEY BY NMCL, <https://www.berkeybynmc.com/> (last visited Jan. 12, 2021); **Travel Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/travel-berkey-system-1-5-gal/> (last visited Jan. 12, 2021); **Big Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/big-berkey-system-2-25-gal/> (last visited Jan. 12, 2021); **Berkey Light System**, BERKEY BY NMCL, <https://www.berkeywater.com/berkey-light-system-2-75-gal/> (last visited Jan. 12, 2021); **Royal Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/royal-berkey-system-3-25-gal/> (last visited Jan. 12, 2021); **Imperial Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/imperial-berkey-system-4-5-gal/> (last visited Jan. 12, 2021); **Crown Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/crown-berkey-system-6-gal/> (last visited Jan. 12, 2021); **Berkey® Purifiers & Filters**, BERKEY BY NMCL, <https://www.berkeybynmc.com/> (last visited Jan. 12, 2021).

¹⁷ *Id.* Additionally, on the www.berkeywater.com webpage for **Travel Berkey**, Defendant further reiterates the same Contaminant-Reduction Representation—specifically, that the Purification Elements remove or dramatically reduce various contaminants.

¹⁸ **Black Berkey Purification Elements**, BERKEY WATER NMCL, <https://www.berkeywater.com/black-berkey-purification-elements/> (last visited Jan. 12, 2021); **Berkey® Purifiers & Filters**, BERKEY BY NMCL, <https://www.berkeybynmc.com/> (last visited Jan. 12, 2021); **Travel Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/travel-berkey-system-1-5-gal/> (last visited Jan. 12, 2021); **Big Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/big-berkey-system-2-25-gal/> (last visited Jan. 12, 2021); **Berkey Light System**, BERKEY BY NMCL, <https://www.berkeywater.com/berkey-light-system-2-75-gal/> (last visited Jan. 12, 2021); **Royal Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/royal-berkey-system-3-25-gal/> (last visited Jan. 12, 2021).

B) Defendant NMCL's Amazon Storefront

27. **Defendant NMCL's Amazon Storefront**¹⁹. In addition to the boxes and website that Defendant maintains, Defendant NMCL has maintained an Amazon Storefront for direct to consumer online sales at <https://www.amazon.com/stores/Berkey/Homepage/page/8EE04EF4-7F75-4F90-A1D7-14A90B704ABA>. Defendant NMCL has approved, authorized, and/or ratified the content and its display on the Amazon Storefront website and otherwise maintained control over said content and display, including the uniform Purification, Contaminant-Reduction, and Longevity Representations regarding the Products set forth below:

a. **Purification Representation & Contaminant-Reduction Representation:**

Defendant NMCL consistently identifies the Systems, on the product-purchase webpages, as “water purification systems,” and/or “water purifiers,” that purify water and/or remove or dramatically reduce contaminants.²⁰ Furthermore,

gal/ (last visited Jan. 12, 2021); **Imperial Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/imperial-berkey-system-4-5-gal/> (last visited Jan. 12, 2021); **Crown Berkey® System**, BERKEY BY NMCL, <https://www.berkeywater.com/crown-berkey-system-6-gal/> (last visited Jan. 12, 2021).

¹⁹ **Berkey Water Filters & Purifiers**, AMAZON, <https://www.amazon.com/stores/Berkey/Homepage/page/8EE04EF4-7F75-4F90-A1D7-14A90B704ABA> (last visited Jan. 12, 2021).

²⁰ **Berkey Authentic Black Purification Elements**, AMAZON, https://www.amazon.com/Berkey-Black-Purification-Elements-Pack/dp/B00BWIWW1Y?ref=ast_sto_dp (last visited Jan. 12, 2021); **Travel Berkey**, AMAZON, https://www.amazon.com/Travel-Berkey-Gravity-Fed-Purification-Elements/dp/B00FMUYU6I?ref=ast_sto_dp (last visited Jan. 12, 2021); **Big Berkey**, AMAZON, https://www.amazon.com/Berkey-Gravity-Fed-Filter-Purification-Elements/dp/B00CYW3EVO/ref=pd_all_pref_1/145-7167337-0441229?_encoding=UTF8&pd_rd_i=B00CYW3EVO&pd_rd_r=dead2369-a531-4926-ac04-276bd36c04ac&pd_rd_w=vZHNb&pd_rd_wg=2Blw7&pf_rd_p=e6474b7e-8fb6-4ee2-b5d6-a1da55185fe6&pf_rd_r=3A37EAY6CCBJRR5WRDEJ&psc=1&refRID=3A37EAY6CCBJRR5WRDEJ (last visited Jan. 12, 2021); **Berkey Light**, AMAZON, https://www.amazon.com/Berkey-Gravity-Fed-Filter-Purification-Elements/dp/B00BWIWX9A/ref=pd_all_pref_14?_encoding=UTF8&pd_rd_i=B00BWIWX9A&pd_rd_r=4aeaa813-961f-40ef-bb3c- (last visited Jan. 12, 2021); **Royal Berkey**, AMAZON, https://www.amazon.com/Berkey-Gravity-Fed-Filter-Purification-Elements/dp/B00BWIWZJI/ref=pd_all_pref_7?_encoding=UTF8&pd_rd_i=B00BWIWZJI&pd_r_d_r=b2086466-5219-400c-a575-9490e8c60981&pd_rd_w=YRY32&pd_rd_wg=YByjz&pf_rd_p=e6474b7e-8fb6-4ee2-b5d6-

Defendant consistently reiterates the Contaminant-Removal Representation on the product-purchase webpages—specifically that the Systems remove or dramatically reduce contaminants.²¹

b. **Longevity Representation:** Defendant NMCL consistently makes the Longevity Representation on the product-purchase webpages—specifically that the Purification Element purifies 3,000 gallons of water per element.²²

C) Defendant's Authorized Agents' Websites

28. **Authorized Agents' Websites.**²³ At all relevant times, Defendant NMCL approved,

a1da55185fe6&pf_rd_r=8K66DFS61DJ6FQZ0QY91&psc=1&refRID=8K66DFS61DJ6FQZ0QY91 (last visited Jan. 12, 2021); **Imperial Berkey**, AMAZON, https://www.amazon.com/Imperial-Berkey-Gravity-Fed-Purification-Elements/dp/B001AKTW2Q/ref=pd_all_pref_2/145-7167337-0441229?_encoding=UTF8&pd_rd_i=B001AKTW2Q&pd_rd_r=236b225a-4f51-49d5-bdba-31a6b85319ee&pd_rd_w=3oPi7&pd_rd_wg=r16IG&pf_rd_p=e6474b7e-8fb6-4ee2-b5d6-a1da55185fe6&pf_rd_r=1H5KE0T500VKQF8HHG12&psc=1&refRID=1H5KE0T500VKQF8HHG12 (last visited Jan. 12, 2021); **Crown Berkey**, AMAZON, https://www.amazon.com/Berkey-Gravity-Fed-Filter-Purification-Elements/dp/B001CJM646/ref=sr_1_14?dchild=1&keywords=crown+berkey&qid=1610410204&sr=8-14 (last visited Jan. 12, 2021).

²¹ *Id.*

²² *Id.*

²³ Berkey Filters, **BERKEY FILTERS**, <https://www.berkeyfilters.com/> (last visited Jan. 12, 2021); Featured Products, **BERKEY DEPOT**, <https://www.berkeydepot.com/> (last visited Jan. 12, 2021); Big Berkey Water Filters, **BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/> (last visited Jan. 12, 2021); Berkey® Purification Systems, **BIODYNAMIC WELLNESS**, <https://www.biodynamicwellness.com/berkey-purification-systems/> (last visited Jan. 12, 2021); Get Berkey: Berkey® Water Filters, **GET BERKEY**, <https://www.getberkey.com/> (last visited Jan. 12, 2021); Featured Products, **MY BERKEY**, <https://myberkey.com/> (last visited Jan. 12, 2021); Home of the Berkey Guy, **DIRECTIVE21**, <https://www.directive21.com/> (last visited Jan. 12, 2021); Fritz Wellness Center, **FRITZ WELLNESS**, <https://www.fritzwellness.com/> (last accessed Jan 12, 2021); Berkey Water Filter, **BERKEY WATER FILTER**, <https://www.berkeywaterfilter.com/> (last visited Jan. 12, 2021); Berkey Water Filters, **IBERKEY**, <https://www.iberkey.com/> (last visited Jan. 12, 2021); The Berkey: Purify Your Water, **THE BERKEY**, <https://www.getberkey.com/> (last visited Jan. 12, 2021); Berkey USA: Rethink What You Drink, **BERKEY USA**, <https://berkeyfilterwater.com/> (last visited Jan. 12, 2021); Berkey Mama: Healthy, Useful, and Fun Products, **BERKEY MAMA**, <https://berkeymama.com/> (last visited Jan. 12, 2021); Berkey Water Filter USA, **BERKEY WATER FILTER USA**, <https://www.berkeywaterfilterusa.com/> (last visited Jan. 12, 2021); Berkey Water USA: For the Most Healthy and Delicious Water, **MY BERKEY WATER USA**, <https://myberkeywaterusa.com/> (last visited Jan. 12, 2021); Purely Water Supply, **PURELY WATER SUPPLY**, <https://purelywatersupply.com/> (last visited Jan. 12, 2021);

authorized, and/or ratified, as well as controlled, its Authorized Agents' use of the same uniform Purification, Contaminant-Reduction, and Longevity Representations on their respective websites to sell the Products on Defendant NMCL's behalf, including the representations set forth below.

a. **Purification Representation & Contaminant-Reduction Representation:**

Defendant NMCL, through its Authorized Agents, identifies the Systems, on the product-purchase webpages for each website, as "water purification systems," and/or "water purifiers," that purify water and/or remove or dramatically reduce contaminants.²⁴ On the product-purchase webpages dedicated to describing the

Berkey Water Filter Systems, **USA BERKEY FILTERS**, <https://www.usaberkeyfilters.com/> (last visited Jan. 12, 2021); Wild Oak Trail: Your Everyday Off Grid Shop, **WILD OAK TRAIL**, <https://wildoaktrail.com/> (last visited Jan. 12, 2021); Game Plan Experts: Prepare for Anything, **GAME PLAN EXPERTS**, <https://gameplanexperts.com/> (last visited Jan. 12, 2021); Practical Preppers: Simply Sustainable, **PRACTICAL PREPPERS**, <https://practicalpreppers.com/> (last visited Jan. 12, 2021).

²⁴ **Black Berkey Purification Elements, BERKEY FILTERS**, <https://www.berkeyfilters.com/products/black-berkey-filter> (last visited Jan. 12, 2021);

Black Berkey Black Purification Elements, BERKEY DEPOT, <https://www.berkeyfilters.com/products/black-berkey-filter> (last visited Jan. 12, 2021); **Travel Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Travel-Berkey-scratch-and-dent> (last visited Jan. 12, 2021); **Big Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Big-Berkey-scratch-and-dent> (last visited Jan. 12, 2021); **Royal Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Royal-Berkey-scratch-and-dent> (last visited Jan. 12, 2021); **Imperial Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Imperial-Berkey-Blemished> (last visited Jan. 12, 2021); **Crown Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Crown-Berkey-Blemished> (last visited Jan. 12, 2021) (the Berkey Light is not sold here);

Berkey Black Purification Elements, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/black-berkey-filters.html> (last visited Jan. 12, 2021); **Travel Berkey, BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/travel-berkey-water-filter.html> (last visited Jan. 12, 2021); **Big Berkey, BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/big-berkey-water-filter.html> (last visited Jan. 12, 2021); **Berkey Light, BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/berkey-light-water-filter.html> (last visited Jan. 12, 2021); **Royal Berkey, BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/royal-berkey-water-filter.html> (last visited Jan. 12, 2021); **Imperial Berkey, BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/imperial-berkey-water-filter.html> (last visited Jan. 12, 2021); **Crown Berkey, BIG BERKEY WATER FILTERS**, <https://www.bigberkeywaterfilters.com/crown-berkey-water-filter.html> (last visited Jan. 12, 2021);

Berkey Black Purification Systems, BIODYNAMIC WELLNESS,
<https://www.biodynamicwellness.com/berkey-purification-systems/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, GET BERKEY, <https://www.getberkey.com/black-berkey-purification-elements-set-of-2-filters/> (last visited Jan. 12, 2021); **Travel Berkey,** GET BERKEY, <https://www.getberkey.com/travel-berkey-water-filter-system-1-5-gallons/> (last visited Jan. 12, 2021); **Big Berkey,** GET BERKEY, <https://www.getberkey.com/big-berkey-water-filter-system-2-25-gallons/> (last visited Jan. 12, 2021); **Berkey Light,** GET BERKEY, <https://www.getberkey.com/berkey-light-water-filter-system-2-75-gallons/> (last visited Jan. 12, 2021); **Royal Berkey,** GET BERKEY, <https://www.getberkey.com/royal-berkey-water-filter-system-3-25-gallons/> (last visited Jan. 12, 2021); **Imperial Berkey,** GET BERKEY, <https://www.getberkey.com/imperial-berkey-water-filter-system-4-5-gallons/> (last visited Jan. 12, 2021); **Crown Berkey,** GET BERKEY, <https://www.getberkey.com/crown-berkey-water-filter-system-6-gallons/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, MY BERKEY, https://myberkey.com/product/prod_az1IjCDvCkaeOh6y (last visited Jan. 12, 2021); **Travel Berkey,** MY BERKEY, https://myberkey.com/product/prod_aRwLzUzW3NORLO2Z (last visited Jan. 12, 2021); **Big Berkey,** MY BERKEY, https://myberkey.com/product/prod_8HjGZu7HrforDXDv (last visited Jan. 12, 2021); **Berkey Light,** MY BERKEY, https://myberkey.com/product/prod_BvkQHHsh8t5s4YVQ (last visited Jan. 12, 2021); **Royal Berkey,** MY BERKEY, https://myberkey.com/product/prod_nRy92iZqFaKUptpk (last visited Jan. 12, 2021); **Imperial Berkey,** MY BERKEY, https://myberkey.com/product/prod_9P0ctrsjx35tdZ2a (last visited Jan. 12, 2021); **Crown Berkey,** MY BERKEY, https://myberkey.com/product/prod_mZNVqx91Py5xzPQn (last visited Jan. 12, 2021);

Berkey Black Purification Elements, DIRECTIVE21, <https://www.directive21.com/products/black-berkey-elements/> (last visited Jan. 12, 2021); **Travel Berkey,** DIRECTIVE21, <https://www.directive21.com/products/travel-berkey-system/> (last visited Jan. 12, 2021); **Big Berkey,** DIRECTIVE21, <https://www.directive21.com/products/big-berkey-water-filters/> (last visited Jan. 12, 2021); **Berkey Light,** DIRECTIVE21, <https://www.directive21.com/products/berkey-light-water-purifier/> (last visited Jan. 12, 2021); **Royal Berkey,** DIRECTIVE21, <https://www.directive21.com/products/royal-berkey-system/> (last visited Jan. 12, 2021); **Imperial Berkey,** DIRECTIVE21, <https://www.directive21.com/products/imperial-berkey-system/> (last visited Jan. 12, 2021); **Crown Berkey,** <https://www.directive21.com/products/crown-berkey-system/> (last visited Jan. 12, 2021);

Fritz Wellness Center, **FRITZ WELLNESS,** <https://www.fritzwellness.com/water> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/2-berkey-replacement-filters/> (last visited Jan. 12, 2021); **Travel Berkey,** BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/travel-berkey/> (last visited Jan. 12, 2021); **Big**

Berkey, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/big-berkey/> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/berkey-light/> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/royal-berkey/> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/imperial-berkey/> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/crown-berkey/> (last visited Jan. 12, 2021);

Black Berkey Purification Elements, iBERKEY, <https://www.iberkey.com/Black-Berkey-Filters> (last visited Jan. 12, 2021);

Black Berkey Purification Elements, THE BERKEY, <https://theberkey.com/products/black-berkey-replacement-filters-set-of-2> (last visited Jan. 12, 2021); **Travel Berkey**, THE BERKEY, <https://theberkey.com/products/travel-berkey-water-filter?variant=16450748167> (last visited Jan. 12, 2021); **Big Berkey**, THE BERKEY, <https://theberkey.com/products/big-berkey-water-filter> (last visited Jan. 12, 2021); **Berkey Light**, THE BERKEY, <https://theberkey.com/products/berkey-light-water-filter> (last visited Jan. 12, 2021); **Royal Berkey**, THE BERKEY, <https://theberkey.com/products/royal-berkey-water-filter> (last visited Jan. 12, 2021); **Imperial Berkey**, THE BERKEY, <https://theberkey.com/products/imperial-berkey-water-filter?variant=16462609543> (last visited Jan. 12, 2021); **Crown Berkey**, THE BERKEY, <https://theberkey.com/products/crown-berkey-water-filter?variant=16462729927> (last visited Jan. 12, 2021);

Black Berkey Filters, BERKEY USA, <https://berkeyfilterwater.com/product/black-berkey-filters/> (last visited Jan. 12, 2021); **Travel Berkey**, BERKEY USA, <https://theberkey.com/products/travel-berkey-water-filter?variant=16450748167> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/big-berkey/> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY USA, <https://berkeyfilterwater.com/product/berkey-light/> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/royal-berkey/> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/imperial-berkey/> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/crown-berkey/> (last visited Jan. 12, 2021);

Black Berkey Replacement Elements, BERKEY MAMA, <https://berkeymama.com/products/black-berkey-replacement-purification-elements-set-of-2> (last visited Jan. 12, 2021);

Black Berkey Purification Elements, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/black-berkey-purification-elements/> (last visited Jan. 12, 2021); **Travel Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/travel-berkey/> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/big-berkey/> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/berkey-light/> (last visited Jan. 12, 2021);

Black Berkey Purification Elements, MY BERKEY WATER USA,
<https://myberkeywaterusa.com/collections/berkey-filters-accessories/products/black-berkey%C2%AE-purification-elements> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, PURELY WATER SUPPLY,
<https://purelywatersupply.com/collections/all-filters-1/products/black-berkey-water-purification-filter-elements-2-pack-bb9-2> (last visited Jan. 12, 2021); **Travel Berkey, PURELY WATER SUPPLY,**
<https://purelywatersupply.com/collections/gravity-filtration-systems/products/travel-berkey-water-filter-1-5-gal-with-2-black-berkey-purification-elements-bt2x2-bb> (last visited Jan. 12, 2021); **Big Berkey, PURELY WATER SUPPLY,** <https://purelywatersupply.com/collections/gravity-filtration-systems/products/big-berkey-water-filter-2-25-gal-with-2-black-berkey-purification-elements-bk4x2-bb> (last visited Jan. 12, 2021); **Berkey Light, PURELY WATER SUPPLY,**
<https://purelywatersupply.com/collections/gravity-filtration-systems/products/berkey-light-water-filter-2-75-gal-with-2-black-berkey-purification-elements-bl4x2-bb> (last visited Jan. 12, 2021); **Royal Berkey, PURELY WATER SUPPLY,** <https://purelywatersupply.com/collections/gravity-filtration-systems/products/royal-berkey-water-filter-3-25-gal-with-2-black-berkey-purification-elements-rb4x2-bb> (last visited Jan. 12, 2021) (the Imperial Berkey and Crown Berkey Systems are not sold here);

Black Berkey Purification Elements, USA BERKEY FILTERS,
<https://www.usaberkeyfilters.com/products/black-berkey-elements/> (last visited Jan. 12, 2021); **Travel Berkey, USA BERKEY FILTERS,** <https://www.usaberkeyfilters.com/products/travel-berkey-system/> (last visited Jan. 8, 2021); **Big Berkey, USA BERKEY FILTERS,**
<https://www.usaberkeyfilters.com/products/big-berkey-water-filter/> (last visited Jan. 12, 2021); **Berkey Light, USA BERKEY FILTERS,** <https://www.usaberkeyfilters.com/products/berkey-light-water-purifier/> (last visited Jan. 12, 2021); **Royal Berkey, USA BERKEY FILTERS,**
<https://www.usaberkeyfilters.com/products/royal-berkey-system/> (last visited Jan. 12, 2021); **Imperial Berkey, USA BERKEY FILTERS,** <https://www.usaberkeyfilters.com/products/imperial-berkey-system/> (last visited Jan. 12, 2021); **Crown Berkey, USA BERKEY FILTERS,**
<https://www.usaberkeyfilters.com/products/crown-berkey-system/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, WILD OAK TRAIL,
https://wildoaktrail.com/products/black-berkey-elements-set-of-two?_pos=19&_sid=5841b288d&_ss=r/ (last visited Jan. 12, 2021); **Travel Berkey, WILD OAK TRAIL,** <https://wildoaktrail.com/products/travel-berkey-system-1-5-gal> (last visited Jan. 12, 2021); **Big Berkey, WILD OAK TRAIL,** <https://wildoaktrail.com/products/big-berkey-2-25-gal-with-2-black-elements/> (last visited Jan. 12, 2021); **Berkey Light, WILD OAK TRAIL,**
<https://wildoaktrail.com/products/berkey-light> (last visited Jan. 12, 2021); **Royal Berkey, WILD OAK TRAIL,** <https://wildoaktrail.com/products/royal-berkey-3-25-gal-with-2-black-elements> (last visited Jan. 12, 2021); **Imperial Berkey, WILD OAK TRAIL,**
<https://wildoaktrail.com/products/imperial-berkey-4-5-gal-with-2-black-elements?variant=44155001414> (last visited Jan. 12, 2021); **Crown Berkey, WILD OAK TRAIL,**
<https://wildoaktrail.com/products/crown-berkey-6-gal-with-2-black-elements?variant=16448970784858> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, GAME PLAN EXPERTS,
<https://gameplanexperts.com/collections/chemicals-treatments/products/black-berkey-filters-set->

Purification Elements, Defendant NMCL, through its Authorized Agents, further identifies the Systems as utilizing “Black Berkey Purification Elements” that purify water and/or that remove or dramatically reduce contaminants.²⁵

of-2 (last visited Jan. 12, 2021); **Travel Berkey**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/travel-berkey-1-5-gal-water-purifier-2-filters> (last visited Jan. 12, 2021); **Big Berkey**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/big-berkey-2-25-gal-water-purifier-with-4-black-berkey-filters> (last visited Jan. 12, 2021); **Berkey Light**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/berkey-light-2-75-gal-water-purifier-2-filters> (last visited Jan. 12, 2021);

Big Berkey, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/big-berkey-water-filter/> (last visited Jan. 12, 2021); **Berkey Light**, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/berkey-light-water-filter/> (last visited Jan. 12, 2021); **Royal Berkey**, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/royal-berkey-water-filter/> (last visited Jan. 12, 2021); **Crown Berkey**, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/crown-berkey/> (last visited Jan. 12, 2021) (the Purification Elements, Travel Berkey Systems, and the Imperial Berkey Systems are not sold here).

²⁵ On the www.berkeyfilters.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Purification and Contaminant-Reduction Representations. **Black Berkey Purification Elements**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/black-berkey-filter> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See* **Travel Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/travel-berkey> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/big-berkey> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/berkey-light> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/royal-berkey> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/imperial-berkey> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/crown-berkey> (last visited Jan. 12, 2021).

On the www.iberkey.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Purification and Contaminant-Reduction Representations. **Black Berkey Purification Elements**, IBERKEY, <https://www.iberkey.com/Black-Berkey-Filters> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See* **Travel Berkey**, IBERKEY, <https://www.iberkey.com/Travel-Berkey> (last visited Jan. 12, 2021); **Big Berkey**, IBERKEY, <https://www.iberkey.com/Big-Berkey> (last visited Jan. 12, 2021); **Berkey Light**, IBERKEY, <https://www.iberkey.com/Berkey-Light> (last visited Jan. 12, 2021); **Royal Berkey**, IBERKEY, <https://www.iberkey.com/Royal-Berkey> (last visited Jan. 12, 2021); **Imperial Berkey**, IBERKEY, <https://www.iberkey.com/Imperial-Berkey> (last visited Jan. 12, 2021); **Crown Berkey**, IBERKEY, <https://www.iberkey.com/Crown-Berkey> (last visited Jan. 12, 2021).

On the www.berkeymama.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Purification and Contaminant-Reduction Representations. **Black Berkey Replacement Elements**, BERKEY MAMA, <https://berkeymama.com/products/black-berkey-replacement-purification-elements-set-of-2> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. See **Travel Berkey**, BERKEY MAMA, <https://berkeymama.com/products/travel-berkey-15-gal> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY MAMA, <https://berkeymama.com/products/big-berkey> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY MAMA, <https://berkeymama.com/products/royal-berkey-325-gal> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY MAMA, <https://berkeymama.com/products/341y6h7xiz> (last visited Jan. 12, 2021). The Berkey Light and Crown Berkey Systems are not sold here.

On the www.berkeywaterfilterusa.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Purification and Contaminant-Reduction Representations. **Black Berkey Purification Elements**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/black-berkey-purification-elements/> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. See **Royal Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/royal-berkey/> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/imperial-berkey/> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY WATER FILTER USA, <https://berkeyfilterwater.com/product/crown-berkey/> (last visited Jan. 12, 2021).

On the www.myberkeywater.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Purification and Contaminant-Reduction Representations. **Black Berkey Purification Elements**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/berkey-filters-accessories/products/black-berkey%C2%AE-purification-elements> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. See **Travel Berkey**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/travel-berkey> (last visited Jan. 12, 2021); **Big Berkey**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/big-berkey-free-shipping-in-usa> (last visited Jan. 12, 2021); **Berkey Light**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/berkey-light-system-1-5-people> (last visited Jan. 12, 2021); **Royal Berkey**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/royal-berkey> (last visited Jan. 12, 2021); **Imperial Berkey**, MY BERKEY WATER USA, https://myberkeywaterusa.com/products/imperial-berkey-4-25-gal?_pos=6&_sid=91c6302f2&_ss=r (last visited Jan. 12, 2021); **Crown Berkey**, MY BERKEY WATER USA, https://myberkeywaterusa.com/products/crown-berkey-4-filter-bundle?_pos=4&_sid=30bd1600e&_ss=r (last visited Jan. 12, 2021).

b. **Longevity Representation:** Defendant NMCL, through its Authorized Agents, consistently makes the same Longevity Representation on the product-purchase webpages—specifically that the Purification Element purifies 3,000 gallons of water per element.²⁶ Additionally, on the product-purchase webpages dedicated

On the www.gameplanexperts.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Purification and Contaminant-Reduction Representations. **Berkey Black Purification Elements**, GAME PLAN EXPERTS, <https://gameplanexperts.com/collections/chemicals-treatments/products/black-berkey-filters-set-of-2> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See* **Royal Berkey**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/royal-berkey-3-25-gal-water-purifier-2-filters> (last visited Jan. 8, 2021). The Imperial Berkey and Crown Berkey Systems are not sold here.

²⁶ **Berkey Black Purification Elements**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/black-berkey-filter> (last visited Jan. 12, 2021); **Travel Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/travel-berkey> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/big-berkey> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/berkey-light> (last accessed Jan 12, 2021); **Royal Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/royal-berkey> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/imperial-berkey> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY FILTERS, <https://www.berkeyfilters.com/products/crown-berkey> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BERKEY DEPOT, <https://www.berkeydepot.com/Black-Berkey-Filters> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/black-berkey-filters.html> (last visited Jan. 12, 2021); **Travel Berkey**, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/travel-berkey-water-filter.html> (last visited Jan. 12, 2021); **Big Berkey**, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/big-berkey-water-filter.html> (last visited Jan. 12, 2021); **Berkey Light**, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/berkey-light-water-filter.html> (last visited Jan. 12, 2021); **Royal Berkey**, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/royal-berkey-water-filter.html> (last visited Jan. 12, 2021); **Imperial Berkey**, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/imperial-berkey-water-filter.html> (last visited Jan. 12, 2021); **Crown Berkey**, BIG BERKEY WATER FILTERS, <https://www.bigberkeywaterfilters.com/crown-berkey-water-filter.html> (last visited Jan. 12, 2021);

Berkey® Purification Systems, BIODYNAMIC WELLNESS, <https://www.biodynamicwellness.com/berkey-purification-systems/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, GET BERKEY, <https://www.getberkey.com/black-berkey-purification-elements-set-of-2-filters/> (last visited Jan. 12, 2021); **Travel Berkey**, GET BERKEY, <https://www.getberkey.com/travel-berkey-water-filter-system-1-5-gallons/> (last visited Jan. 12, 2021); **Big Berkey**, GET BERKEY, <https://www.getberkey.com/big-berkey-water-filter-system-2-25-gallons/> (last visited Jan. 12, 2021); **Berkey Light**, GET BERKEY, <https://www.getberkey.com/berkey-light-water-filter-system-2-75-gallons/> (last visited Jan. 12, 2021); **Royal Berkey**, GET BERKEY, <https://www.getberkey.com/royal-berkey-water-filter-system-3-25-gallons/> (last visited Jan. 12, 2021); **Imperial Berkey**, GET BERKEY, <https://www.getberkey.com/imperial-berkey-water-filter-system-4-5-gallons/> (last visited Jan. 12, 2021); **Crown Berkey**, GET BERKEY, <https://www.getberkey.com/crown-berkey-water-filter-system-6-gallons/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, MY BERKEY, https://myberkey.com/product/prod_az1IjCDvCkaeOh6y (last visited Jan. 12, 2021); **Travel Berkey**, MY BERKEY, https://myberkey.com/product/prod_aRwLzUzW3NORLO2Z (last visited Jan. 12, 2021); **Big Berkey**, MY BERKEY, https://myberkey.com/product/prod_8HjGZu7HrforDXDv (last visited Jan. 12, 2021); **Berkey Light**, MY BERKEY, https://myberkey.com/product/prod_BvkQHHsh8t5s4YVQ (last visited Jan. 12, 2021); **Royal Berkey**, MY BERKEY, https://myberkey.com/product/prod_nRy92iZqFaKUptpk (last visited Jan. 8, 2021); **Imperial Berkey**, MY BERKEY, https://myberkey.com/product/prod_9P0ctrsjx35tdZ2a (last visited Jan. 12, 2021); **Crown Berkey**, MY BERKEY, https://myberkey.com/product/prod_mZNVqx91Py5xzPQn (last visited Jan., 2021);

Berkey Black Purification Elements, DIRECTIVE21, <https://www.directive21.com/products/black-berkey-elements/> (last visited Jan. 12, 2021);

Berkey Filtration Systems, FRITZ WELLNESS, <https://www.fritzwellness.com/water> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/2-berkey-replacement-filters/> (last visited Jan. 12, 2021); **Travel Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/travel-berkey/> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/big-berkey/> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/berkey-light/> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/royal-berkey/> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/imperial-berkey/> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY WATER FILTER, <https://www.berkeywaterfilter.com/product/crown-berkey/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, iBERKEY, <https://www.iberkey.com/Black-Berkey-Filters> (last visited Jan. 12, 2021);

Black Berkey Purification Elements, THE BERKEY, <https://theberkey.com/products/black-berkey-replacement-filters-set-of-2> (last visited Jan. 12, 2021); **Travel Berkey**, THE BERKEY, <https://theberkey.com/products/travel-berkey-water-filter?variant=16450748167> (last visited Jan. 12, 2021); **Big Berkey**, THE BERKEY, <https://theberkey.com/products/big-berkey-water-filter> (last visited Jan. 12, 2021); **Berkey Light**, THE BERKEY, <https://theberkey.com/products/berkey-light-water-filter> (last visited Jan. 12, 2021); **Royal Berkey**, THE BERKEY, <https://theberkey.com/products/royal-berkey-water-filter> (last visited Jan. 12, 2021); **Imperial Berkey**, THE BERKEY, <https://theberkey.com/products/imperial-berkey-water-filter?variant=16462609543> (last visited Jan. 12, 2021); **Crown Berkey**, THE BERKEY, <https://theberkey.com/products/crown-berkey-water-filter?variant=16462729927> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BERKEY USA, <https://berkeyfilterwater.com/product/black-berkey-filters/> (last visited Jan. 12, 2021); **Travel Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/travel-berkey/> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/big-berkey/> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY USA, <https://berkeyfilterwater.com/product/berkey-light/> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/royal-berkey/> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/imperial-berkey/> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY USA, <https://berkeyfilterwater.com/product/crown-berkey/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BERKEY MAMA, <https://berkeymama.com/products/black-berkey-replacement-purification-elements-set-of-2> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/black-berkey-purification-elements/> (last visited Jan. 12, 2021); **Travel Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/travel-berkey/> (last visited Jan. 12, 2021); **Berkey Light**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/berkey-light/> (last visited Jan. 12, 2021);

Black Berkey Purification Elements, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/berkey-filters-accessories/products/black-berkey%C2%AE-purification-elements> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, PURELY WATER SUPPLY, <https://purelywatersupply.com/collections/all-filters-1/products/black-berkey-water-purification-filter-elements-2-pack-bb9-2> (last visited Jan. 12, 2021); **Travel Berkey**, PURELY WATER SUPPLY, <https://purelywatersupply.com/collections/gravity-filtration-systems/products/travel-berkey-water-filter-1-5-gal-with-2-black-berkey-purification-elements-bt2x2-bb> (last visited Jan. 12, 2021); **Big Berkey**, PURELY WATER SUPPLY, <https://purelywatersupply.com/collections/gravity-filtration-systems/products/big-berkey-water-filter-2-25-gal-with-2-black-berkey-purification-elements-bk4x2-bb> (last visited Jan. 12, 2021); **Berkey Light**, PURELY WATER SUPPLY, <https://purelywatersupply.com/collections/gravity-filtration-systems/products/berkey-light-water-filter-2-75-gal-with-2-black-berkey-purification-elements-bl4x2-bb> (last visited Jan. 12, 2021);

Royal Berkey, PURELY WATER SUPPLY, <https://purelywatersupply.com/collections/gravity-filtration-systems/products/royal-berkey-water-filter-3-25-gal-with-2-black-berkey-purification-elements-rb4x2-bb> (last visited Jan. 12, 2021) (the Imperial Berkey and Crown Berkey Systems are not sold here);

Berkey Black Purification Elements, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/black-berkey-elements/> (last visited Jan. 12, 2021); **Travel Berkey**, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/travel-berkey-system/> (last visited Jan. 12, 2021); **Big Berkey**, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/big-berkey-water-filter/> (last visited Jan. 12, 2021); **Berkey Light**, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/berkey-light-water-purifier/> (last visited Jan. 12, 2021); **Royal Berkey**, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/royal-berkey-system/> (last visited Jan. 12, 2021); **Imperial Berkey**, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/imperial-berkey-system/> (last visited Jan. 12, 2021); **Crown Berkey**, USA BERKEY FILTERS, <https://www.usaberkeyfilters.com/products/crown-berkey-system/> (last visited Jan. 12, 2021);

Berkey Black Purification Elements, WILD OAK TRAIL, https://wildoaktrail.com/products/black-berkey-elements-set-of-two?_pos=19&_sid=5841b288d&_ss=r/ (last visited Jan. 12, 2021); **Travel Berkey**, WILD OAK TRAIL, <https://wildoaktrail.com/products/travel-berkey-system-1-5-gal> (last visited Jan. 12, 2021); **Big Berkey**, WILD OAK TRAIL, <https://wildoaktrail.com/products/big-berkey-2-25-gal-with-2-black-elements/> (last visited Jan. 12, 2021); **Berkey Light**, WILD OAK TRAIL, <https://wildoaktrail.com/products/berkey-light> (last visited Jan. 12, 2021); **Royal Berkey**, WILD OAK TRAIL, <https://wildoaktrail.com/products/royal-berkey-3-25-gal-with-2-black-elements> (last visited Jan. 12, 2021); **Imperial Berkey**, WILD OAK TRAIL, <https://wildoaktrail.com/products/imperial-berkey-4-5-gal-with-2-black-elements?variant=44155001414> (last visited Jan. 12, 2021); **Crown Berkey**, WILD OAK TRAIL, <https://wildoaktrail.com/products/crown-berkey-6-gal-with-2-black-elements?variant=16448970784858> (last visited Jan. 12, 2021)

Berkey Black Purification Elements, GAME PLAN EXPERTS, <https://gameplanexperts.com/collections/chemicals-treatments/products/black-berkey-filters-set-of-2> (last visited Jan. 12, 2021); **Travel Berkey**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/travel-berkey-1-5-gal-water-purifier-2-filters> (last visited Jan. 12, 2021); **Big Berkey**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/big-berkey-2-25-gal-water-purifier-with-4-black-berkey-filters> (last visited Jan. 12, 2021); **Berkey Light**, GAME PLAN EXPERTS, <https://gameplanexperts.com/products/berkey-light-2-75-gal-water-purifier-2-filters> (last visited Jan. 12, 2021);

Big Berkey, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/big-berkey-water-filter/> (last visited Jan. 8, 2021); **Berkey Light**, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/berkey-light-water-filter/> (last visited Jan. 8, 2021); **Royal Berkey**, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/royal-berkey-water-filter/> (last visited Jan. 8, 2021); **Crown Berkey**, PRACTICAL PREPPERS, <https://practicalpreppers.com/product/crown-berkey/> (last visited Jan. 8, 2021) (the Purification Elements, the Travel Berkey Systems, and the Imperial Berkey Systems are not sold here).

to describing the Purification Elements, Defendant NMCL, through its Authorized Agents, identifies the Systems as utilizing “Black Berkey Purification Elements” and represents that the Purification Elements purify 3,000 gallons of water per element.²⁷

²⁷ On the www.berkeydepot.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Berkey Black Purification Elements, BERKEY DEPOT**, <https://www.berkeydepot.com/Black-Berkey-Filters> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Travel Berkey, BERKEY DEPOT*, <https://www.berkeydepot.com/Travel-Berkey-scratch-and-dent> (last visited Jan. 12, 2021); **Big Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Big-Berkey-scratch-and-dent> (last visited Jan. 12, 2021); **Royal Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Royal-Berkey-scratch-and-dent> (last visited Jan. 12, 2021); **Imperial Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Imperial-Berkey-Blemished> (last visited Jan. 12, 2021); **Crown Berkey, BERKEY DEPOT**, <https://www.berkeydepot.com/Crown-Berkey-Blemished> (last visited Jan. 12, 2021). The Berkey Light System is not sold here.

On the www.directive21.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Berkey Black Purification Elements, DIRECTIVE21**, <https://www.directive21.com/products/black-berkey-elements/> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Travel Berkey, DIRECTIVE21*, <https://www.directive21.com/products/travel-berkey-system/> (last visited Jan. 12, 2021); **Big Berkey, DIRECTIVE21**, <https://www.directive21.com/products/big-berkey-water-filters/> (last visited Jan. 12, 2021); **Berkey Light, DIRECTIVE21**, <https://www.directive21.com/products/berkey-light-water-purifier/> (last visited Jan. 12, 2021); **Royal Berkey, DIRECTIVE21**, available at <https://www.directive21.com/products/royal-berkey-system/> (last visited Jan. 12, 2021); **Imperial Berkey, DIRECTIVE21**, <https://www.directive21.com/products/imperial-berkey-system/> (last visited Jan. 12, 2021); **Crown Berkey, DIRECTIVE21**, <https://www.directive21.com/products/crown-berkey-system/> (last visited Jan. 12, 2021).

On the www.iberkey.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Berkey Black Purification Elements, iBERKEY**, <https://www.iberkey.com/Black-Berkey-Filters> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Travel Berkey, iBERKEY*, <https://www.iberkey.com/Travel-Berkey> (last visited Jan. 12, 2021); **Big Berkey, iBERKEY**, <https://www.iberkey.com/Big-Berkey> (last visited Jan. 12, 2021); **Berkey Light, iBERKEY**, <https://www.iberkey.com/Berkey-Light> (last visited Jan. 12, 2021); **Royal Berkey, iBERKEY**, <https://www.iberkey.com/Royal-Berkey> (last visited Jan. 12, 2021); **Imperial Berkey, iBERKEY**, <https://www.iberkey.com/Imperial-Berkey> (last visited Jan. 12, 2021); **Crown Berkey, iBERKEY**, <https://www.iberkey.com/Crown-Berkey> (last visited Jan. 12, 2021).

On the www.berkeymama.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Black Berkey Purification Elements, MY BERKEY WATER USA**, <https://myberkeywaterusa.com/collections/berkey-filters-accessories/products/black-berkey%C2%AE-purification-elements> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Travel Berkey*, BERKEY MAMA, <https://berkeymama.com/products/travel-berkey-15-gal> (last visited Jan. 12, 2021); **Big Berkey**, BERKEY MAMA, <https://berkeymama.com/products/big-berkey> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY MAMA, <https://berkeymama.com/products/royal-berkey-325-gal> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY MAMA, <https://berkeymama.com/products/341y6h7xiz> (last visited Jan. 8, 2021). The Berkey Light and the Crown Berkey Systems are not sold here.

On the www.berkeywaterfilterusa.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Berkey Black Purification Elements, BERKEY WATER FILTER USA**, <https://www.berkeywaterfilterusa.com/product/black-berkey-purification-elements/> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Big Berkey*, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/big-berkey/> (last visited Jan. 12, 2021); **Royal Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/royal-berkey/> (last visited Jan. 12, 2021); **Imperial Berkey**, BERKEY WATER FILTER USA, <https://www.berkeywaterfilterusa.com/product/imperial-berkey/> (last visited Jan. 12, 2021); **Crown Berkey**, BERKEY WATER FILTER USA, <https://berkeyfilterwater.com/product/crown-berkey/> (last visited Jan. 12, 2021).

On the www.myberkeywaterusa.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Black Berkey Purification Elements, MY BERKEY WATER USA**, <https://myberkeywaterusa.com/collections/berkey-filters-accessories/products/black-berkey%C2%AE-purification-elements> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Travel Berkey*, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/travel-berkey> (last visited Jan. 12, 2021); **Big Berkey**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/big-berkey-free-shipping-in-usa> (last visited Jan. 12, 2021); **Berkey Light**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/berkey-light-system-1-5-people> (last visited Jan. 12, 2021); **Royal Berkey**, MY BERKEY WATER USA, <https://myberkeywaterusa.com/collections/select-berkey-water-systems-filters/products/royal-berkey> (last visited Jan. 12, 2021); **Imperial Berkey**, MY BERKEY WATER USA, https://myberkeywaterusa.com/products/imperial-berkey-4-25-gal?_pos=6&_sid=91c6302f2&_ss=r (last visited Jan. 12, 2021); **Crown Berkey**, MY BERKEY WATER USA, https://myberkeywaterusa.com/products/crown-berkey-4-filter-bundle?_pos=4&_sid=30bd1600e&_ss=r (last visited Jan. 12, 2021).

c. **Other Authorized Agents.** Defendant may have had additional Authorized Agents, of which Plaintiff and Plaintiff's counsel are currently unaware, who maintained additional websites that are not explicitly cited above. Consistent with Defendant NMCL's business practice of uniformly using the Challenged Representations to sell Products, it is alleged based upon this information and belief that such additional Authorized Agent websites likewise sold the Products on behalf of Defendant NMCL using the same Challenged Representations, as approved, authorized, ratified, and/or controlled by Defendant NMCL.

D. The Challenged Representations Are False, Misleading, and Deceptive

29. **Regulation of Water Filters.** There is no federal regulation for residential water treatment filters or purifiers for private use (as opposed to public water systems and treatment facilities) that requires certain contaminants to be removed, at set rates, for a specified amount of time or volume of water.²⁸ However, the American National Standards Institute ("ANSI") with NSF International ("NSF") have created industry wide and nationally accepted testing protocols and performance standards, taking into consideration different industry and advocacy group input, to establish transparency and minimum requirements for the safety and performance of various products, including water filter systems such as the Products,²⁹ including:

a. **NSF/ANSI Standard 42-Aesthetic Effects:** NSF/ANSI Standard 42 establishes testing protocols for drinking water filtration or treatment units, including point-

On the www.gameplanexperts.com webpage for the Purification Elements, Defendant NMCL, through its Authorized Agent, reiterates the same Longevity Representations. **Berkey Black Purification Elements, GAME PLAN EXPERTS**, <https://gameplanexperts.com/collections/chemicals-treatments/products/black-berkey-filters-set-of-2> (last visited Jan. 12, 2021). The following systems utilize the Black Berkey Purification Elements and Defendant, through its Authorized Agent, references the Purification Elements on these webpages. *See Royal Berkey, GAME PLAN EXPERTS*, <https://gameplanexperts.com/products/royal-berkey-3-25-gal-water-purifier-2-filters> (last visited Jan. 8, 2021). The Imperial Berkey and the Crown Berkey Systems are not sold here.

²⁸ NSF Standards for Water Treatment Systems, NSF, <https://www.nsf.org/knowledge-library/standards-water-treatment-systems> (last visited Jan 12, 2021).

²⁹ *Id.*

of-use systems (like water pitchers and the Products, referred to as “POU systems”) and point-of-entry systems (like plumbing in-line systems, referred to as “POE systems”), to determine whether they, among other things, perform in accord with the manufacturer’s specifications to reduce non-health-related contaminants, such as chlorine, taste and odor, chloramine, particulate, iron, manganese, zinc, and total dissolved solids.³⁰

b. **NSF/ANSI Standard 53-Health Effects:** NSF/ANSI Standard 53 establishes testing protocols for drinking water filtration or treatment units, including POU and POE systems, to determine whether they, among other things, perform in accord with the manufacturer’s specifications to reduce health-related contaminants.³¹ The list of health-related contaminants exceeds 50 different types of contaminants that includes, for example, microbiological (harmful cysts), chemical (disinfection byproducts, pesticides and herbicides, volatile organic compounds (“VOCs”), and methyl tertiary butyl ether (“MTBEs”), and particulate matter (lead, mercury, etc.). The standard also sets testing protocols to determine whether the POU/POE systems reduce contaminants to a level at or below federally accepted maximum levels of health-related contaminants in public water systems under the Safe Drinking Water Act (codified at 42 U.S.C. §§ 300f, *et seq.*). *See also* 40 CFR 141.

c. **NSF/ANSI Standard 401-Emerging Compounds/Incidental Contaminants:** NSF/ANSI Standard 401 establishes testing protocols and minimum performance standards for drinking water filtration or treatment units, including POU and POE systems, that are designed to remove up to 15 individual contaminants that have been identified in published studies as occurring in drinking water, including prescription drugs, over the counter pain medications, pesticides, herbicides, and some new chemical compounds used in flame retardants, plastics, and

³⁰ *Id.*

³¹ *Id.*

detergents.³²

30. **No ANSI/NSF Certified Lab Tests.** The Systems and Purification Elements are not tested by an ANSI or NSF accredited or certified laboratory to meet NSF/ANSI standards pertaining to water treatment systems, including NSF/ANSI Standard 42, 53, or 401.³³ Nor are Defendants' Products registered with the California Water Board pursuant to California Health & Safety Code sections 116825, *et seq.*³⁴

A) ANSI Accredited Laboratory IAMPO's Test Results

31. **NSF Certified Lab Test Results.** IAMPO R&T ("IAMPO") is a lab accredited by ANSI, through continual and detailed ANSI audits, to ensure that IAMPO's product certifications—certifications that the lab tested and determined the product complies or fails to comply with ANSI standards—are consistently accurate, complete, and without bias.³⁵ IAMPO tested two Purification Elements, installed in a Berkey Crown, under NSF/ANSI 42 and 53 Standards, to evaluate the Products' performance in removing or reducing contaminants—specifically, Chloramine, VOCs through the surrogate Chloroform, and Hexavalent Chromium (also known as Chromium 6) at low and high pH levels of 6.5 and 8.5. The lab conducted the tests consistent all applicable NSF/ANSI testing protocols. Reports regarding the findings and conclusions of the tests (attached hereto as **Exhibit "3"** (Lab Results)) show that the Products do not purify water, let alone remove or dramatically reduce contaminants, including the Filtered Contaminants, for more than 100 gallons,

³² *Id.*

³³ *Are the Black Berkey® Purification Elements NSF certified*, BERKEY BY NMCL, November 10, 2014, <http://berkeywaterkb.com/are-the-black-berkey-purification-elements-nsf-certified/> (last visited Jan. 11, 2021); *see also Listing Category Search Page | NSF International*, NSF International, <https://info.nsf.org/Certified/DWTU/> (last visited Jan 12, 2021) (provides complete listing of all manufacturers or products with NSF Certified Drinking Water Treatment Units); *Residential Water Treatment Devices*, CA Water Boards, https://www.waterboards.ca.gov/drinking_water/certlic/device/watertreatmentdevices.html (last visited January 13, 2021) (identifying IAPMO R&T, NSF International, UL, and Water Quality Association as accredited laboratories and providing link to Registered Water Treatment Devices at https://www.waterboards.ca.gov/drinking_water/certlic/device/docs/registered_water_treatment_devices.xlsx) (last visited January 13, 2021).

³⁴ *Id.*

³⁵ IAMPO, Water Systems FAQ, <https://www.iapmo.org/rt/water-systems/faq> (last visited Jan. 11, 2021).

let alone 3,000 gallons consistent with the Challenged Representations. The Products performance was so abysmal that they did not even satisfy the lowest minimum reduction rate of 80% noted in Defendant's fine print regarding the Contaminant Reduction Representations. The Products repeatedly failed to comply with Defendant's Purification and Contaminant Reduction Representations within the first gallon (0.03%) to 200 gallons (6.67%) of the Products purported 3,000 gallon lifespan.

- a. **NSF/ANSI 42 Inorganic Minerals Reduction (Chloramine).** In fine print on the Purification Elements' box, Defendant represents that the Purification Elements reduce inorganic minerals, including Chloramine, to below lab detectible limits. IAMPO tested the Purification Elements, under NSF/ANSI Standard 42, for chloramine reduction. Influent water was prepared and checked daily according to specifications in NSF/ANSI 42, sections 7.3.2 and 7.3.2.6.1. The influent water was run through the Berkey Crown system, with two Purification Elements installed according manufacturer instructions. Samples of influent and effluent water were taken at 1 gallon, 50 gallons, 100 gallons, and 200 gallons to measure chloramine and the percentage reduction from the influent and effluent water. Although Defendant claimed that Chloramine would be reduced to below lab detectible limits for 3,000 gallons of water, the Products failed to perform accordingly within the first 50 gallons of water sampled. The average percent reduction within less than the first 7% of the Product's purported lifespan (200 gallons of 3,000 gallons) fell below 80% (the purported lowest percentage reduction of any of the Filtered Contaminants described in fine print). Tables that display the findings from IAMPO's test are below and set forth in greater detail in **Exhibit "3"** (Lab Results):

Table One: IAMPO Lab Report Findings—Influent & Effluent Chloramine Levels			
Sample Points (Gallons)	Influent Chloramine (mg/L)	Effluent 1 Chloramine (mg/L)	Percent Reduction (%)

1	1	3.20	<RL ³⁶	98.4
2	50	3.11	0.40	87.1
3	100	3.11	0.92	70.4
4	200	2.86	1.25	56.3
5	Table Two: IAMPO Lab Report Findings—Average Influent,			
6	Effluent, and Percent Reduction of Chloramine Levels			
7		Results	Standard	
8			Requirements	
9	Average Influent (ppm)	3.07	3 mg/L +/- 0.3	
10	Average Effluent (ppm)	0.86	0.5	
11	Average Percent Reduction	78.1		

IAMPO discontinued the test at 200 gallons because it failed to perform according to specifications more than once and so the test was discontinued. From the abysmal performance of the Products under NSF/ANSI 42 testing of removal or reduction of an inorganic mineral, such as Chloramine, it appears that the Products fail to purify water, or otherwise remove or dramatically reduce inorganic minerals to below detectible lab levels (or at least more than the fine-print minimum 80% lowest purported percentage reduction of any Filtered Contaminant), for more than 50 gallons. Defendant's Purification, Contaminant-Reduction, and Longevity Representations are false.

b. **NSF/ANSI 53 for VOCs Reduction (Chloroform).** In fine print on the Purification Elements' box, Defendant represents that the Purification Elements reduce volatile organic compounds ("VOCs"), including Chloroform, to below lab detectible limits. IAMPO tested the Purification Elements, under NSF/ANSI Standard 53, for Chloroform reduction. Influent water was prepared and checked daily according to specifications in NSF/ANSI 53, section 7.2.5.1. The influent

³⁶ The term "<RL" means less than reporting limit of 0.04 mg/L.

water was run through the Berkey Crown system, with two Purification Elements installed according manufacturer instructions. Samples of influent and effluent water were taken at 1 gallon, 50 gallons, 100 gallons, and 200 gallons to measure Chloroform and the percentage reduction from the influent and effluent water. Although Defendant claimed that Chloroform would be reduced to below lab detectible limits for 3,000 gallons of water, the Products failed to perform accordingly within the first 50 gallons of water sampled. The average percent reduction within less than the first 7% of the Product's purported lifespan (200 gallons of 3,000 gallons) fell below 80% (the purported lowest percentage reduction of any of the Filtered Contaminants described in fine print). Tables that display the findings from IAMPO's test are below and set forth in greater detail in **Exhibit "3"** (Lab Results):

Table One: IAMPO Lab Report Findings—Influent & Effluent Chloroform (VOC) Levels			
Sample Points (Gallons)	Influent Chloroform (ppb)	Effluent 1 Chloroform (ppb)	Percent Reduction (%)
1	268	1.14	99.6
50	267	0.24	99.9
100	227	27.6	87.8
200	343	122	64.4

Table Two: IAMPO Lab Report Findings—Average Influent, Effluent, and Percent Reduction of Chloroform (VOC) Levels		
	Results	Standard Requirements
Average Influent (ppm)	276.3	270-330 ppb
Average Effluent (ppm)	37.7	
Average Percent Reduction	87.9	

1 IAMPO discontinued the test at 200 gallons because it failed to perform according
2 to specifications more than once and so the test was discontinued. From the
3 abysmal performance of the Products under NSF/ANSI 53 testing of removal or
4 reduction of a VOC, such as Chloroform, it appears that the Products fail to purify
5 water, or otherwise remove or dramatically reduce VOCs to below detectible lab
6 levels (or at least more than the fine-print minimum 80% lowest purported
7 percentage reduction of any Filtered Contaminant), for more than 50 gallons.
8 Defendant's Purification, Contaminant-Reduction, and Longevity
9 Representations are false.

- 10
11 c. **NSF/ANSI 53 for Heavy Metals Reduction (Chromium-6 High pH).** In fine
12 print on the Purification Elements' box, Defendant represents that the Purification
13 Elements reduce Heavy Metals, including Chromium 6, by at least 80% (and for
14 Chromium 6, at least 99.85%). IAMPO tested the Purification Elements, under
15 NSF/ANSI Standard 53, for reduction of Hexavalent Chromium, at a High pH of
16 8.5. Influent water was prepared and checked daily according to specifications in
17 NSF/ANSI 53, section 7.4.2.1 and 7.4.2.4. The influent water was run through
18 the Berkey Crown system, with two Purification Elements installed according
19 manufacturer instructions. Samples of influent and effluent water were taken at 1
20 gallon and 50 gallons to measure Chromium and the percentage reduction from
21 the influent and effluent water. Although Defendant claimed that Chromium
22 would be reduced by 99.85% (and all heavy metals by at least 80%) for 3,000
23 gallons of water, the Products failed to perform accordingly within the first gallon
24 and first 50 gallons of water sampled. The average percent reduction within less
25 than the first 7% of the Product's purported lifespan fell far below 80% (the
26 purported lowest percentage reduction of any of the Filtered Contaminants
27 described in fine print). Tables that display the findings from IAMPO's test are
28 below and set forth in greater detail in **Exhibit "3"** (Lab Results):

Table One: IAMPO Lab Report Findings—Influent & Effluent Chromium-6 (High pH) Levels

Sample Points (Gallons)	Influent Chromium (ppb)	Effluent 1 Chromium (ppb)	Percent Reduction
1	284	147	48.2
50	273	270	1.10

Table Two: IAMPO Lab Report Findings—Average Influent, Effluent, and Percent Reduction of Chromium-6 (High pH) Levels

	Results	Standard Requirements
Average Influent (ppm)	278.5	270-330
Average Effluent (ppm)	208.5	<100
Average Percent Reduction	24.7	

IAMPO discontinued the test after the first two samples at 1 gallon and 50 gallons because the Products failed to perform according to specifications more than once. From the abysmal performance of the Products under NSF/ANSI 53 testing of removal or reduction of a Heavy Metal, such as Chromium (high pH), it appears that the Products fail to purify water, or otherwise remove or dramatically reduce Heavy Metals to, in the very least, the fine-print lowest purported percentage reduction rate of 80% for any Filtered Contaminant. The Products fail to comply with the Purification and Contaminant Reduction Representations for any amount of water—having failed at 1 gallon and 50 gallons. Defendant's Purification, Contaminant-Reduction, and Longevity Representations are false.

- d. **NSF/ANSI 53 for Heavy Metals Reduction (Chromium-6 Low pH).** In fine print on the Purification Elements' box, Defendant represents that the Purification Elements reduce Heavy Metals, including Chromium 6, by at least 80% (and for

Chromium 6, at least 99.85%). IAMPO tested the Purification Elements, under NSF/ANSI Standard 53, for reduction of Hexavalent Chromium, at a Low pH of 6.5. Influent water was prepared and checked daily according to specifications in NSF/ANSI 53, section 7.4.2.1 and 7.4.2.4. The influent water was run through the Berkey Crown system, with two Purification Elements installed according to manufacturer instructions. Samples of influent and effluent water were taken at 1 gallon, 50 gallons, and 100 gallons to measure Chromium and the percentage reduction from the influent and effluent water. Although Defendant claimed that Chromium would be reduced by 99.85% (and all heavy metals by at least 80%) for 3,000 gallons of water, the Products failed to perform accordingly within the first gallon and first 100 gallons of water sampled. The average percent reduction within less than the first 7% of the Product's purported lifespan fell far below 80% (the purported lowest percentage reduction of any of the Filtered Contaminants described in fine print). Tables that display the findings from IAMPO's test are below and set forth in greater detail in **Exhibit "3"** (Lab Results):

Table One: IAMPO Lab Report Findings—Influent & Effluent Chromium-6 (Low pH) Levels			
Sample Points (Gallons)	Influent Chromium (ppb)	Effluent 1 Chromium (ppb)	Percent Reduction
1	270	132	51.1
50	275	68.4	75.1
100	271	159	41.3
Table Two: IAMPO Lab Report Findings—Average Influent, Effluent, and Percent Reduction of Chromium-6 (Low pH) Levels			
	Results	Standard Requirements	
Average Influent (ppm)	272	270-330	

Average Effluent (ppm)	119.8	<100
Average Percent Reduction	55.9	

IAMPO discontinued the test after the first 100 gallons because the Products failed to perform according to specifications more than once. From the abysmal performance of the Products under NSF/ANSI 53 testing of removal or reduction of a Heavy Metal, such as Chromium (low pH), it appears that the Products fail to purify water, or otherwise remove or dramatically reduce Heavy Metals to, in the very least, the fine-print lowest purported percentage reduction rate of 80% for any Filtered Contaminant. The Products fail to comply with the Purification and Contaminant Reduction Representations for even the first 100 gallons of the purported 3,000 gallons that Defendant promised to purify or filter—having failed at the first gallon and first 100 gallons. Defendant’s Purification, Contaminant-Reduction, and Longevity Representations are false.

- e. **NSF/ANSI 53 for Nitrate.** Across all mediums and on the labels/packaging for the Systems and Purification Elements, Defendant advertises these Products with the Challenged Representations. IAMPO tested the Purification Elements, under NSF/ANSI Standard 53, for reduction of Nitrate. Influent water was prepared and checked daily according to specifications in NSF/ANSI 53, section 7.2.2 and 7.2.2.1. The influent water was run through the Berkey Crown system, with two Purification Elements installed according manufacturer instructions. Samples of influent and effluent water were taken at 1 gallon and 50 gallons to measure Nitrate and the percentage reduction from the influent and effluent water. Although Defendant claimed that Nitrate would be removed or dramatically or greatly reduced for 3,000 gallons of water, the Products failed to perform accordingly within the first 1 gallon and 50 gallons of water sampled. The average percent reduction within less than the first 1.67% of the Product’s purported

lifespan fell far below 80% (the purported lowest percentage reduction of any of the Filtered Contaminants described in fine print on the Purification Element's label/packaging). Tables that display the findings from IAMPO's test are below and set forth in greater detail in **Exhibit "3"** (Lab Results):

Table One: IAMPO Lab Report Findings—Influent & Effluent Nitrate Levels			
Sample Points (Gallons)	Influent Nitrate (mg/L)	Effluent 1 Nitrate (mg/L)	Percent Reduction
1	29.8	27.3	8.39
50	31.4	28.9	7.96
Table Two: IAMPO Lab Report Findings—Average Influent, Effluent, and Percent Reduction of Nitrate Levels			
	Results	Standard Requirements	
Average Influent (ppm)	30.6	27-33 ppb	
Average Effluent (ppm)	28.1	<10 mg/L	
Average Percent Reduction	8.18		

IAMPO discontinued the test after the first 50 gallons because the Products failed to perform according to specifications more than once. From the abysmal performance of the Products under NSF/ANSI 53 testing of removal or reduction of a Nitrate, it appears that the Products fail to purify water, or otherwise remove or dramatically reduce Nitrates to, in the very least, the fine-print lowest purported percentage reduction rate of 80% for any Filtered Contaminant. The Products fail to comply with the Purification and Contaminant Reduction Representations for even the first 50 gallons of the purported 3,000 gallons that Defendant promised to purify or filter—having failed at the first 1 gallon and first 50 gallons. Defendant's Purification, Contaminant-Reduction, and Longevity

1 Representations are false.

2 B) Activated Carbon Filter Design

3 32. **Activated Carbon Filter Design.** Activated carbon filters, such as the Purification
4 Elements, are, in simple terms, carbon dust particles that are compressed and molded into a block.
5 Heat is applied to the block to create cracks, crevices, and pores. These openings allow water to
6 flow through the carbon block and increase the block's surface area, which increases the likelihood
7 that a contaminant will attach to the block. The attachment is created as carbon in the block bonds
8 with the carbon in contaminants as the water passes through the block. The strength of the bond
9 depends on the chemical composition of the contaminant. The denser the block (the more and/or
10 smaller the carbon particles) the slower the water will pass through the block. The denser the block,
11 however, the greater the reduction of contaminants as the water spends more time in the block,
12 increasing the likelihood that contaminants will come into contact with and attach to the carbon.
13 The denser the block, the longer its lifespan as it has more carbon molecules to which contaminants
14 may attach. Extremely dense blocks typically require a pump or pressurized water to increase the
15 flow rate. In order for the Purification Elements and Systems to purify water, or otherwise remove
16 or dramatically reduce contaminants by at least 80%, for 3,000 gallons consistent with the
17 Challenged Representations, the blocks would be so incredibly dense that water could not pass
18 through them by virtue of mere gravity. The Products' design simply cannot live up to the
19 Challenged Representations.

20 C) Viruses/Bacteria Water Treatment Design

21 33. **Viruses/Bacteria Water Treatment Design.** Activated carbon filters, and other
22 mechanical means of removing contaminants, are simply not designed to remove bacteria or viruses
23 for more than 24 to 48 hours. Only chemical or ultraviolet light treatments are accepted within the
24 industry to eliminate these organisms in water purification or filtration systems. In highly
25 specialized industrial applications (like the manufacture of pharmaceuticals), extraordinarily dense
26 activated carbon filters are used to remove these microbes. However, the filters experience an
27 overgrowth of the microbes it filters out within 24 to 48 hours, requiring constant replacement. The
28 Purification Elements purportedly last 3,000 gallons—far more than 1 day's use. Even if a family

consumed 30 gallons of water per day, the filter would be expected to last 100 days. As the filter neither uses chemical or ultraviolet light treatment, nor requires replacement to prevent the overgrowth of microorganisms every 24 hours, the Products' design simply cannot live up to the Challenged Representations regarding viruses and bacteria.

34. **The Challenged Representations are False.** Accordingly, contrary to Defendant's Challenged Representations, the Products do not, for 3,000 gallons per Purification Element, either: (1) provide pure water (H₂O) free of any contaminants; or (2) "remove or dramatically reduce" or "remove or greatly reduce" contaminants from water, including the Filtered Contaminants at rates of at least 80% or more.

E. Defendant Misled Plaintiff and Reasonable Consumers, who relied on the Material and False Challenged Representations to Their Detriment

35. **Material.** The False Advertising Claims of the Products' Challenged Representations were and are material to reasonable consumers, including Plaintiff, in deciding to purchase the Products.

36. **Reliance.** Plaintiff and reasonable consumers relied and rely on the Challenged Representations in making the decision to purchase the Products.

37. **Consumers Lack Knowledge of Falsity.** At the time Plaintiff and reasonable consumers purchased the Products, they did not know, and had no reason to know, that the Challenged Representations were, in fact, false, misleading, deceptive, and unlawful as set forth herein.

38. **Misrepresentation/Omission.** The Challenged Representations materially misrepresent the Products as water purifiers that, for 3,000 gallons per Purification Element, provide pure water (H₂O) or water free of contaminants; or otherwise provide water with contaminants removed or dramatically/greatly reduced. In reality, the Products do not provide any of these purported benefits.

39. **Defendant's Knowledge.** Defendant knew, or should have known, that the Challenged Representations were false, misleading, deceptive, and unlawful, at the time that the Products were advertised, warranted, and/or sold and, instead, intentionally and deliberately used

the Challenged Representations to sell Products regardless.

40. **Detriment.** Plaintiff and reasonable consumers would not have purchased the Products, or would have purchased the Products on different terms, if they had known the truth—that the Challenged Representations are false. Accordingly, based on Defendants’ material misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased the Products to their detriment.

F. The Products Are Substantially Similar

41. As described *supra*, Plaintiff purchased the Travel Berkey and Purification Elements (the “**Purchased Products**”). The additional products, Big Berkey, Light Berkey, Royal Berkey, Imperial Berkey, or Crown Berkey (the “**Unpurchased Products**”), are substantially similar to the Purchased Products.

- a. **Defendants.** All Products are manufactured, marketed, and advertised by the Defendant.
- b. **Brand.** All Products are sold under the Berkey brand name.
- c. **Marketing Demographics.** All Products are marketed towards end-users who are consumers.
- d. **Purpose.** All Products are intended for the primary purpose of filtering and purifying water without need for a pressurized pipe hook-up (e.g., a faucet) or electricity to operate.
- e. **Challenged Representations.** All Products are advertised using the same challenged contaminant-removal and longevity claims.
- f. **Black Berkey Purification Elements.** All of the Systems require the same Purification Elements to filter or purify water.
- g. **System Does Not Impact Efficacy.** The varying volume of water that the System can hold, number of Purification Elements installed, and the material of which the canister is composed does not impact the advertised efficacy of the Purification Elements. Whether the System’s canister is made of plastic or stainless steel, can incorporate one to four Purification Elements, or it can hold 1.5 or up to 6 gallons, does not alter or affect the Purification Elements’ efficacy—their ability to “purify” water (provide pure H₂O), their reduction rate of contaminants (be it eliminating entirely or dramatically/greatly reducing

contaminants from water), and/or their longevity (3,000 gallons per Purification Element). Adding volume of water, Purification Elements, and steel or plastic to the canisters does not increase efficacy as it pertains to the Challenged Representations.

h. **Accessories/Parts.** The Accessories are worthless to the extent the Systems and Purifications are worthless as they serve no purpose unless the Challenged Representations are true.

i. **Misleading Effect.** The misleading effect of the Products' false Challenged Representations is the same for all Products—consumers are defrauded, misled, and deceived into purchasing the Products that they would not have otherwise purchased at the purchase price.

G. Inadequate Remedy at Law

42. **No Adequate Remedy at Law.** Plaintiff(s) and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitations under the FAL and CLRA. In addition, the statutes of limitations vary for certain states' laws for breach of warranty and unjust enrichment/restitution, between approximately 2 to 6 years. Thus, California Subclass members who purchased the Products more than 3 years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL. Similarly, Nationwide Class members who purchased the Products prior to the furthest reach-back under the statute of limitations for breach of warranty, will be barred from recovery if equitable relief were not permitted for restitution/unjust enrichment.

b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes, for example, Defendant(s)'s overall unfair marketing

1 scheme to promote and brand the Products with the Challenged Representations,
2 across a multitude of media platforms, including the Products' labels and
3 packaging, over a long period of time, in order to gain an unfair advantage over
4 competitor products and to take advantage of consumers' desire for products that
5 comport with the Challenged Representations. The UCL also creates a cause of
6 action for violations of law (such as statutory or regulatory requirements related
7 to representations and omissions made on the type of products at issue). Thus,
8 Plaintiff(s) and Class members may be entitled to restitution under the UCL, while
9 not entitled to damages under other causes of action asserted herein (e.g., the FAL
10 requires actual or constructive knowledge of the falsity; the CLRA is limited to
11 certain types of plaintiffs (an individual who seeks or acquires, by purchase or
12 lease, any goods or services for personal, family, or household purposes) and other
13 statutorily enumerated conduct). Similarly, unjust enrichment/restitution is
14 broader than breach of warranty. For example, in some states, breach of warranty
15 may require privity of contract or pre-lawsuit notice, which are not typically
16 required to establish unjust enrichment/restitution. Thus, Plaintiff(s) and Class
17 members may be entitled to recover under unjust enrichment/restitution, while not
18 entitled to damages under breach of warranty, because they purchased the
19 products from third-party retailers or provide adequate pre-lawsuit notice prior to
20 the commencement of this action.

- 21 c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive
22 relief is appropriate on behalf of Plaintiff(s) and members of the Class because
23 Defendant(s) continue(s) to misrepresent the Products with the Challenged
24 Representations. Injunctive relief is necessary to prevent Defendant(s) from
25 continuing to engage in this unfair, fraudulent, and/or unlawful conduct described
26 herein and to prevent future harm—none of which can be achieved through
27 available legal remedies (such as monetary damages to compensate past harm).
28 Further, injunctive relief, in the form of affirmative disclosures is necessary to

1 dispel public misperception about the Products that has resulted from years of
 2 Defendant(s)'s unfair, fraudulent, and unlawful marketing efforts. Such
 3 disclosures would include, but are not limited to, publicly disseminated statements
 4 that the Products are, for example, compliant or consistent with the Challenged
 5 Representations, as well as prominent qualifications and/or disclaimers on the
 6 Products' front label. An injunction requiring affirmative disclosures to dispel the
 7 public's misperception, and prevent the ongoing deception and repeat purchases
 8 based thereon, is also not available through a legal remedy (such as monetary
 9 damages). In addition, Plaintiff(s) is (are) unable at present to accurately quantify
 10 the damages caused by Defendant(s)'s future harm, rendering injunctive relief all
 11 the more necessary. For example, because the court has not yet certified any class,
 12 the following remains unknown: the scope of the class, the identities of its
 13 members, their respective purchasing practices, prices of future Product sales, and
 14 quantities of future Product sales.

- 15 d. **Public Injunction.** Further, because a "public injunction" is available under the
 16 UCL, damages will not adequately "benefit the general public" in a manner
 17 equivalent to an injunction.
- 18 e. **California vs. Nationwide Class Claims.** Violation of the UCL, FAL, and CLRA
 19 are claims asserted on behalf of Plaintiff and the California Subclass against non-
 20 California Defendants, while breach of warranty and unjust enrichment/restitution
 21 are asserted on behalf of Plaintiff(s) and the Nationwide Class. Dismissal of
 22 farther-reaching claims would bar recovery for non-California members of the
 23 Class.
- 24 f. **Discovery Ongoing.** In addition, discovery—which has not yet been provided
 25 and/or completed—may reveal that the claims providing legal remedies are
 26 inadequate. At this time, forcing an election of remedies at the initial pleadings
 27 stage, in the absence of completed discovery regarding class certification and
 28 merits, is premature and likely to lead to subsequent, potentially belated, and hotly

contested motions to amend the pleadings to add equitable remedies based on a lengthy historical recount of discovery and analysis of voluminous exhibits, transcripts, discovery responses, document productions, etc., as well as related motions to seal confidential information contained therein.

VI.

CLASS ACTION ALLEGATIONS

43. **Class Definition:** Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of Plaintiff(s) and all others similarly situated, and as members of the Class(es) defined as follows:

All residents of the United States who, within the applicable statute of limitations periods, purchased the Products (“**Nationwide Class**”) for purposes other than resale; and

All residents of California who, within four years prior to the filing of this Complaint, purchased the Products for purposes other than resale (“**California Subclass**”).

(“Nationwide Class” and “California Subclass,” are collectively referred to as the “**Class**”).

44. **Class Definition Exclusions:** Excluded from the Class are: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer.

45. **Reservation of Right to Amend Class Definition:** Plaintiff(s) reserve(s) the right to amend or otherwise alter the class definitions presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

46. **Rule 23 Requirements:** This action is properly maintainable as a class action pursuant to Federal Rule of Civil Procedure 23 for the reasons set forth below.

47. **Numerosity:** Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Class consists of thousands of purchasers (if not

more) dispersed throughout the United States. Accordingly, it would be impracticable to join all members of the Class before the Court.

48. **Common Question Predominate:** There are numerous and substantial questions of law or fact common to all members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by advertising and marketing the Products;
- b. Whether Defendant's conduct constitutes an unfair method of competition, or unfair or deceptive act or practice, in violation of Civil Code section 1750, *et seq.*;
- c. Whether Defendant used deceptive representations in connection with the sale of the Products in violation of Civil Code section 1750, *et seq.*;
- d. Whether Defendant represented that the Products have characteristics or quantities that they do not have in violation of Civil Code section 1750, *et seq.*;
- e. Whether Defendant advertised the Products with intent not to sell them as advertised in violation of Civil Code section 1750, *et seq.*;
- f. Whether Defendant's advertising of the Products is untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;
- g. Whether Defendant knew or by the exercise of reasonable care should have known its advertising was and is untrue or misleading in violation of Business and Professions Code section 17500, *et seq.*;
- h. Whether Defendant's conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendant's conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendant's conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Defendant's conduct constitutes breach of an express or implied warranty;
- l. Whether Plaintiff and the Class are entitled to injunctive relief;
- m. Whether Defendant was unjustly enriched by Defendant's unlawful conduct.

49. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members Plaintiff seeks to represent because Plaintiff, like the Class Members, purchased Defendant's misleadingly and deceptively advertised Products. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were

1 experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct.
 2 Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are
 3 based on the same legal theories.

4 50. **Adequacy:** Plaintiff is an adequate representative of the Class because Plaintiff's
 5 interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff
 6 will fairly and adequately protect Class Members' interests and has retained counsel experienced
 7 and competent in the prosecution of complex class actions, including complex questions that arise
 8 in consumer protection litigation.

9 51. **Superiority and Substantial Benefit:** A class action is superior to other methods for
 10 the fair and efficient adjudication of this controversy, since individual joinder of all members of the
 11 Class is impracticable and no other group method of adjudication of all claims asserted herein is
 12 more efficient and manageable for at least the following reasons:

- 13 a. The claims presented in this case predominate over any questions of law or fact, if
 14 any exist at all, affecting any individual member of the Class;
- 15 b. Absent a Class, the members of the Class will continue to suffer damage and
 16 Defendant's unlawful conduct will continue without remedy while Defendant profits
 17 from and enjoys its ill-gotten gains;
- 18 c. Given the size of individual Class Members' claims, few, if any, Class Members could
 19 afford to or would seek legal redress individually for the wrongs Defendant committed
 20 against them, and absent Class Members have no substantial interest in individually
 21 controlling the prosecution of individual actions;
- 22 d. When the liability of Defendant has been adjudicated, claims of all members of the
 23 Class can be administered efficiently and/or determined uniformly by the Court; and
- 24 e. This action presents no difficulty that would impede its management by the Court as
 25 a class action, which is the best available means by which Plaintiff and Class Members
 26 can seek redress for the harm caused to them by Defendant.

27 52. **Inconsistent Rulings:** Because Plaintiff seeks relief for all members of the Class, the
 28 prosecution of separate actions by individual members would create a risk of inconsistent or varying
 adjudications with respect to individual members of the Class, which would establish incompatible
 standards of conduct for Defendant.

53. **Injunction/Equitable Relief:** The prerequisites to maintaining a class action for
 injunctive or equitable relief pursuant to Federal Rule of Civil Procedure 23(b)(2) are met as

1 Defendant(s) has(ve) acted, or refused/failed to act, on grounds generally applicable to the Class,
2 thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

3 54. **Manageability:** Plaintiff and Plaintiff's counsel are unaware of any difficulties that
4 are likely to be encountered in the management of this action that would preclude its maintenance
5 as a class action.

6 **VII.**

7 **FIRST CAUSE OF ACTION**

8 **Breach of Express Warranty**

9 ***(On Behalf of the Nationwide Class and California Subclass)***

10 55. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference the
11 allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

12 56. **Nationwide Class.** Plaintiff brings this claim individually and on behalf of the
13 Nationwide Class and the California Subclass (the Class) who purchased the Products within the
14 applicable statute of limitations.

15 57. **Express Warranty.** Defendant made promises and affirmations of fact through its
16 marketing and advertising at point of purchase—specifically, the Challenged Representations.
17 These representations constitute express warranties and became part of the basis of the bargain
18 between Plaintiff and members of the Class, on one hand, and Defendant, on the other hand.

19 58. **Breach of Warranty.** The Challenged Representations, however, are false because
20 the Products do not conform to said representations and, therefore, Defendant has breached these
21 express warranties.

22 59. **Causation/Damages.** As a direct and proximate result of Defendant's breach of
23 express warranty, Plaintiff and members of the Class were harmed in the amount of the purchase
24 price they paid for the Products. Further, Plaintiff and members of the Class have suffered and
25 continue to suffer economic losses and other damages including, but not limited to, the amounts
26 paid for the Products, and any interest that would have accrued on those monies, in an amount to be
27 proven at trial. Accordingly, Plaintiff seeks a monetary award for breach of express warranty of
28 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class

62. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for breach of express warranty on behalf of Plaintiff and the applicable class. Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants were, at all times, aware of the probable dangerous consequences of their conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and a nation of consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and a nation of consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

SECOND CAUSE OF ACTION

(On Behalf of the Nationwide Class and California Subclass)

61. **Nationwide Class.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and the California Subclass (the Class) who purchased the Products within the applicable statute of limitations.

1 62. **Implied Warranty.** Under the implied warranty of merchantability, Defendant
2 warranted that the Products are of the same quality as those generally acceptable in the trade; are fit
3 for their ordinary purposes for which they are to be used; and conform to the promises or
4 affirmations of fact made on their labels, packages, and marketing materials—specifically,
5 Defendant warranted that the Products conformed to the Challenged Representations.

6 63. **Breach of Implied Warranty.** The Challenged Representations, however, are false
7 because the Products do not conform to said representations and, therefore, Defendant has breached
8 these implied warranties.

9 64. **Notice.** Plaintiff took reasonable steps to notify Defendant within a reasonable time
10 that the Products do not have the expected quality and otherwise fail to comply with the Challenged
11 Representations.

12 65. **Causation/Damages.** As a direct and proximate result of Defendant's breach of
13 implied warranty, Plaintiff and members of the Class were harmed in the amount of the purchase
14 price they paid for the Products. Further, Plaintiff and members of the Class have suffered and
15 continue to suffer economic losses and other damages including, but not limited to, the amounts
16 paid for the Products, and any interest that would have accrued on those monies, in an amount to be
17 proven at trial. Accordingly, Plaintiff seeks a monetary award for breach of implied warranty of
18 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class
19 for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing
20 and future harm that will result.

21 66. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action
22 for breach of implied warranty on behalf of Plaintiff and the applicable class. Defendants' unfair,
23 fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or
24 fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants'
25 misconduct is malicious as Defendants acted with the intent to cause Plaintiff and a nation of
26 consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and
27 knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants were, at all
28 times, aware of the probable dangerous consequences of their conduct and deliberately failed to

avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and a nation of consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and a nation of consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

IX.

THIRD CAUSE OF ACTION

Unjust Enrichment/Restitution

(On Behalf of the Nationwide Class and California Subclass)

63. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

64. **Nationwide Class.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and the California Subclass (the Class) who purchased the Products within the applicable statute of limitations.

65. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

66. **Defendant's Knowledge of Conferred Benefit.** Defendant had knowledge of such benefit and Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

67. **Defendant's Unjust Receipt Through Deception.** Defendant's knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent, misleading, and deceptive representations and omissions—specifically, the false Challenged Representations.

68. **Causation/Damages.** As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

69. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for unjust enrichment on behalf of Plaintiff and the applicable class. Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants were, at all times, aware of the probable dangerous consequences of their conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and a nation of consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and a nation of consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

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X.

FOURTH CAUSE OF ACTION

Violation of California Unfair Competition Law (“UCL”)

(Cal. Bus. & Prof. Code §§ 17200, et seq.)

(On Behalf of the California Subclass)

70. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in the complaint, as though fully set forth herein.

71. **California Subclass.** This cause of action is brought pursuant to Business and Professions Code sections 17200, *et seq.*, on behalf of Plaintiff and the California Subclass who purchased the Products within the applicable statute of limitations.

72. **False Challenged Representations.** Defendant, in its advertising and marketing of the Products, made false, misleading, fraudulent, and deceptive statements and omissions regarding the quality and characteristics of the Products—specifically, the Challenged Representations—to sell the Products to consumers.

73. **Defendant’s Deliberately False and Fraudulent Marketing Scheme.** Defendant does not have any reasonable basis to make the Challenged Representations. It is industry standard to take reasonable steps to substantiate one’s marketing claims before using them sell products. The Products fail to NSF/ANSI standardized testing at an abysmal rate. The Products’ design cannot possibly perform the Challenged Representations. Accordingly, Defendant knew or should have known that the Products do not conform to the Challenged Representations.

74. **False Challenged Representations Cause Purchase of Products.** Defendant’s advertising of the Products led to, and continues to lead to, reasonable consumers, including Plaintiff and the Class, to purchase the Products based on the belief that the Products conform to the Challenged Representations, when they do not, in fact, conform. Plaintiff and the California subclass would not have purchased the Products but for their reliance on the Challenged Representations.

75. **Injury in Fact.** Plaintiff and the California Subclass have suffered injury in fact and have lost money or property as a result of and in reliance upon the Challenged Representations.

76. **Conduct Violates the UCL.** Defendant’s conduct, as alleged herein, constitutes

1 unfair, unlawful, and fraudulent business practices pursuant to California Business & Professions
 2 Code sections 17200, *et seq.* **(the “UCL”).** The UCL provides, in pertinent part: “Unfair
 3 competition shall mean and include unlawful, unfair or fraudulent business practices and unfair,
 4 deceptive, untrue or misleading advertising[.]” Cal. Bus & Prof. Code § 17200. Defendant’s use of
 5 various forms of advertising media, call attention to, or give publicity to the sale of goods or
 6 merchandise that are not as represented in any manner constitutes unfair competition, unfair,
 7 deceptive, untrue or misleading advertising, and an unlawful business practice within the meaning
 8 of the UCL. Defendant’s conduct is unfair, fraudulent, and unlawful as set forth in subsections
 9 below.

10 77. **No Reasonably Available Alternatives/Legitimate Business Interests.** Defendant
 11 failed to avail itself of reasonably available and lawful alternatives to using the Challenged
 12 Representations to further any legitimate business interest in selling the Products.

13 78. **Business Practice.** All of the conduct alleged herein occurs and continues to occur
 14 in Defendant’s business. Defendant’s wrongful conduct is part of a pattern, practice and/or
 15 generalized course of conduct, which will continue on a daily basis until Defendant voluntarily
 16 alters its conduct or it is otherwise ordered to do so.

17 79. **Injunction.** Pursuant to California Business and Professions Code sections 17203
 18 and 17535, Plaintiff and the members of the California Subclass seek an order of this Court
 19 enjoining Defendants from continuing to engage, use, or employ the Challenged Representations in
 20 the advertising, labeling/packaging, and marketing of the Products for sale. Likewise, Plaintiff and
 21 the members of the California Subclass seek an order requiring Defendants to disclose the truth
 22 behind the Challenged Representations through an affirmative marketing campaign, disclose the
 23 truth whenever asked, and to take all other corrective action necessary to dispel the public
 24 misperception of the Products that Defendant intentionally fostered, facilitated, propagated, and
 25 advanced through the Challenged Representations

26 80. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in
 27 violation of the UCL, Plaintiff and members of the California Subclass were harmed in the amount
 28 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have

suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct to prevent ongoing and future harm that will result.

81. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for violation of the UCL on behalf of Plaintiff and the applicable class. Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants were, at all times, aware of the probable dangerous consequences of their conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and a nation of consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and a nation of consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

A. "Unfair" Prong

82. **Unfair Standard.** Under the UCL, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid." *Camacho v. Auto Club of Southern California*, 142 Cal.App.4th 1394, 1403 (2006). Some Courts "weigh the utility of the defendant's conduct against

the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012). Some Courts require that “unfairness must be tethered to some legislative declared policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

83. **Legislative Policy—Safe & Clean Water.** Safe and clean water is a fundamental right. In 2010, the General Assembly of the United Nations recognized the fundamental human right to clean and safe water.³⁷ The “lack of access to safe, sufficient and affordable water . . . has a devastating effect on the health, dignity and prosperity of billions of people, and has significant consequences for the realization of other human rights.”³⁸ Numerous municipalities across the nation have likewise recognized the fundamental right to safe and clean water, including, for example, the California legislature. *See* Cal. Water Code § 106.3(a) (2012). As early as 1974, Congress enacted the Safe Drinking Water Act (codified at 42 U.S.C. §§ 300f) to protect public health by regulating the nation’s public drinking water supply by authorizing the Environmental Protection Agency to set national health standards for public drinking water to protect against naturally-occurring and man-made contaminants found in drinking water.

84. **Legislative Policy—Truthful Advertising.** California and Congress, by and through the Federal Trade Commission (“FTC”), have recognized consumers’ rights to truth in advertising by prohibiting manufacturers, marketers, and sellers from making material misrepresentations that are likely to mislead to the reasonable or ordinary consumer. *See, e.g.*, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (FAL); 15 U.S.C. § 45 (Federal Trade Commission Act).

85. **Injury.** Defendant’s advertising and marketing of the Products with the Challenged Representations, when the Products do not conform to such representations, fails to confer any benefit to consumers. Consumers do not receive Products commensurate with their reasonable expectations. Instead, they overpay for the Products and receive Products of lesser standards than what they reasonably expected to receive. Consumers cannot avoid being deceived by Defendant’s

³⁷ United Nations, *Resolution Adopted by the General Assembly on 28 July 2010*, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292 (last visited January 11, 2021).

³⁸ United Nations, *Human Rights to Water and Sanitation*, <https://www.unwater.org/water-facts/human-rights/> (last visited January 11, 2021).

Challenged Representations because they have no way to determine whether the Products comport without purchase them first. Consumers, deceived into purchasing Defendant's Products, forego other alternative products that live up to the Challenged Representations, placing their health and their families' health at risk.

86. **No Utility.** Defendant has no legitimate interest in lying to consumers. Lying to consumers to sell Products that serve no purpose or fail to comport with one's representations has no utility. Reasonable alternatives to lying are truthful advertising.

87. **Unfair Business Practice.** Accordingly, Defendant's use of the Challenged Representations to sell the Products constitutes an unfair business practice in violation of the UCL. The injuries caused by Defendant's deceptive Challenged Representations outweigh any benefits. Consumers could not reasonably avoid the injuries. There is no utility or legitimate business interest in lying to consumers. Legislatures in California and across the Nation recognize the consumers' right to safe and clean water.

B. "Fraudulent" Prong

88. **Fraud Standard.** California Business and Professions Code section 17200, *et seq.*, considers conduct fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1267 (1992).

89. **Fraudulent & Material Challenged Representations.** Defendant used the Challenged Representations with the intent to sell the Products to consumers, including Plaintiff and the California Subclass. The Challenged Representations are false and Defendant knew or should have known of their falsity. The Challenged Representations are likely to deceive consumers into purchasing the Products because they are material to the average, ordinary, and reasonable consumer.

90. **Reasonable and Detrimental Reliance.** Plaintiff and the California Subclass reasonably and detrimentally relied on the material and false Challenged Representations to their detriment in that they purchased the Products.

C. "Unlawful" Prong

91. **Unlawful Standard.** California Business and Professions Code sections 17200, *et*

1 *seq.*, identifies violations of other laws as “unlawful practices that the unfair competition law makes
2 independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D.
3 Cal. 2008).

4 92. **Violations of CLRA and FAL.** Defendant’s use of the Challenged Representations
5 to sell the Products violates California Civil Code sections 1750, *et seq.* (the **CLRA**) and California
6 Business and Professions Code sections 17500, *et seq.* (the **FAL**) as set forth below in the sections
7 regarding those causes of action.

8 93. **Fraud.** Additionally, Defendant’s use of the Challenged Misrepresentations to sell
9 the Products violates California Civil Code sections 1572 (actual fraud), 1573 (constructive fraud),
10 1709-1710 (fraudulent deceit), and 1711 (deceit upon the public), as set forth above.

11 94. **Cal. Health & Safety Code §§ 116825, *et seq.* re: Water Treatment Devices.**
12 California Health and Safety Code sections 116825, *et seq.* govern the registration, certification,
13 labeling/packaging claims, and sale of the Products in the State of California.

14 a. **Applicability.** California Health and Safety Code sections 116825, *et seq.* apply
15 to Defendant’s sale of the Products using the Challenged Representations. The
16 Products are “water treatment devices” because they are POU systems sold for
17 residential use and intended to improve the water supply through filtration. *See*
18 Cal. Health & Safety Code § 116825(a). Defendant claims that the Products
19 remove contaminants—which constitute any health-related physical, chemical,
20 biological, or radiological substance or matter in water. *Id.* § 116825(d).
21 Defendant makes “health or safety claims”, under section 116825(e), as the
22 Products purport to remove the Filtered Contaminants.

23 b. **Registration & Publication.** California Health and Safety Code section 116832
24 requires a manufacturer, such as Defendant, who sells water treatment devices,
25 such as the Products, in California for which the manufacturer makes a “health or
26 safety claim”, such as the Challenged Representations, to register the devices with
27 the regulatory agency in California that enforces sections 116825, *et seq.*, by
28 providing the following information that the regulatory agency will publish

1 online: (1) identification of the manufacturer by name, contact information, and
2 website; (2) the devices name and product identification number; (3) the name of
3 each contaminant claimed to be removed or reduced by the device; (4) the name
4 of the organization that meets ANSI accreditation standards that has certified that
5 the device removes or reduces the contaminant, including the name of the testing
6 protocol or standard used to test the device, date of the test, summary of the results,
7 and the date by which the device must be retested; and (5) a product information
8 worksheet that summarizes the foregoing information, provides a copy of the
9 aforementioned certificate, provides the service flow rate and rated service life,
10 describes general use conditions/needs (e.g., maximum turbidity, bacteriological
11 quality of source water, max/minimum operating temperatures and pressures), and
12 references to the owner's manual for general operation and maintenance and the
13 manufacturer's warranty. Pursuant to section 116845, the California regulatory
14 agency publishes online a list of each water treatment device with valid
15 certification, each device with registration materials submitted in compliance with
16 section 116832, and the aforementioned product information worksheet. Section
17 116835 prohibits the sale of water treatment devices, such as the Products, in the
18 State of California, if the device is not included on the published list.

19 c. **Label/Packaging.** Under California Health and Safety Code section 116835,
20 manufacturers who make a health or safety claim for a water treatment device,
21 such as Defendant who makes the Challenged Representations for the Products,
22 are required to "the exterior packaging . . . shall clearly identify the contaminant
23 or contaminants that the device has been certified . . . to remove or reduce. If a
24 device has been certified to remove or reduce more than five contaminants, at least
25 five contaminants shall be listed on the exterior packaging followed by a statement
26 directing consumers to visit the manufacturer's Internet Web site to obtain
27 information regarding additional contaminants that the device is certified to
28 remove or reduce."

1 d. **Violations of Section 116825, *et seq.*** Defendant has violated the registration and
2 certification requirements applicable to the Products. Defendant has failed to
3 register the Products with the California regulatory agency pursuant to section
4 116825—Defendant has not provided any of the disclosures or proof of
5 certification through an ANSI accredited laboratory that performed NSF/ANSI
6 standardized testing. Defendant has continued to sell the Products in violation of
7 section 116835, even though the Products are not published online by the
8 California regulatory agency pursuant to section 116845. Defendant has failed to
9 comply with the Label/Packaging requirements pursuant to section 116835
10 because the Challenged Representations are not clearly identified on the exterior
11 packaging of the Products or on a referenced website.

12 e. **Statutory Penalties.** Pursuant to section 116840 of the California Health and
13 Safety Code, Plaintiff and the California Subclass, are entitled to a civil penalty
14 up to and including \$5,000 for each violation. As the conduct constituting
15 Defendant's violation is of a continuing nature, each day of the conduct is a
16 separate and distinct violation. Accordingly, Plaintiff and the California Subclass
17 seek civil penalties under this section in an amount to be proven at the time of
18 trial.

19 95. **Purpose of Laws.** The foregoing laws are designed to ensure truth in advertising,
20 ensure transparency and honesty and the sale of goods and services to consumers, and prevent
21 manufacturers and marketers from unlawfully taking advantage of the public through misleading,
22 deceptive, fraudulent, and false advertising and representations.

23 96. **Violations of Laws Cause Harm.** Defendant's violation of the foregoing laws have
24 caused or contributed to the harm suffered by Plaintiff and the California Subclass in that Defendant
25 has used the Challenged Representations to deceive them into purchasing the Products. Plaintiff
26 and the California Subclass would not have purchased the Products had they known the truth that
27 Defendant deliberately concealed and obfuscated. The Challenged Representations are material in
28 that they are likely to cause a reasonable consumer, such as Plaintiff and the California Subclass, to

1 purchase the Products. Accordingly, Plaintiff and the California Subclass has suffered harm—to
 2 wit, the purchase of the Products.

3 XI.

4 **FIFTH CAUSE OF ACTION**

5 **Violation of California False Advertising Law (“FAL”)**

6 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

7 **(*On Behalf of the California Subclass*)**

8 97. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all
 9 allegations contained in the complaint, as though fully set forth herein.

10 98. **California Subclass.** Plaintiff brings this claim individually and on behalf of the
 11 California Subclass who purchased the Products within the applicable statute of limitations.

12 99. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code
 13 section 17500, *et seq.*, prohibits “unfair, deceptive, untrue or misleading advertising[.]”

14 100. **False & Material Challenged Representations Disseminated to Public.** Defendant
 15 violated section 17500 when it advertised and marketed the Products through the unfair, deceptive,
 16 untrue, and misleading Challenged Representations disseminated to the public through Product
 17 labels/packaging and advertising on websites. These representations were false because the
 18 Products did not conform to them. The representations were material because they are likely to
 19 mislead a reasonable consumer into purchasing the Products.

20 101. **Constructive/Actual Notice Falsity.** Defendant knew or should have known that the
 21 Products do not conform to the Challenged Representations because Defendant did not have any
 22 reasonable basis to make the Challenged Representations. It is industry standard to take reasonable
 23 steps to substantiate one’s marketing claims before using them to sell products. The Products fail
 24 to NSF/ANSI standardized testing at an abysmal rate. The Products’ design cannot possibly achieve
 25 the Challenged Representations.

26 102. **Intent to Sell.** Defendant’s Challenged Representations were specifically designed
 27 to induce reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

28 103. **Causation/Damages.** As a direct and proximate result of Defendant’s misconduct in

1 violation of the FAL, Plaintiff and members of the California Subclass were harmed in the amount
2 of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have
3 suffered and continue to suffer economic losses and other damages including, but not limited to, the
4 amounts paid for the Products, and any interest that would have accrued on those monies, in an
5 amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL
6 in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
7 California Subclass for said monies, as well as injunctive relief to enjoin Defendant's misconduct
8 to prevent ongoing and future harm that will result.

9 **104. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action
10 for violation of the FAL on behalf of Plaintiff and the applicable class. Defendants' unfair,
11 fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or
12 fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants'
13 misconduct is malicious as Defendants acted with the intent to cause Plaintiff and a nation of
14 consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and
15 knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants were, at all
16 times, aware of the probable dangerous consequences of their conduct and deliberately failed to
17 avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all
18 relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would
19 look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct
20 subjected Plaintiff and a nation of consumers to cruel and unjust hardship in knowing disregard of
21 their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally
22 misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and a nation of
23 consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed,
24 authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of
25 Defendants.

26 ///

27 ///

28 ///

XII.

SIXTH CAUSE OF ACTION

Violation of Consumers Legal Remedies Act (“CLRA”)

(Cal. Civ. Code §§ 1750, *et seq.*)

(On Behalf of the California Subclass)

105. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in the complaint, as though fully set forth herein.

106. **California Subclass.** Plaintiff brings this claim individually and on behalf of the California Subclass who purchased the Products within the applicable statute of limitations.

107. **CLRA Standard.** Plaintiff brings this action pursuant to California’s Consumers Legal Remedies Act (“CLRA”), codified at California Civil Code sections 1750, *et seq.* The CLRA provides that “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.”

108. **Goods/Services.** The Products are “goods” as defined by the CLRA under California Civil Code section 1761(a).

109. **Defendant.** Defendant is a “person” as defined by the CLRA under California Civil Code section 1761(c).

110. **Consumers.** Plaintiff and members of the California Subclass are “consumers” who purchased the Products for personal, family, or household purposes as defined by the CLRA under California Civil Code section 1761(d).

111. **Transactions.** The purchase of the Products by Plaintiff and members of the California Subclass are “transactions” as defined by the CLRA under California Civil Code section 1761(e).

112. **Violations of the CLRA.** Defendant violated the following sections of the CLRA by selling the Products to Plaintiff and the California Subclass through the false, misleading, deceptive, and fraudulent Challenged Representations:

///

- a. Section 1770(a)(5) by representing that the Products have “characteristics, . . . uses [or] benefits . . . which [they] do not have”.
- b. Section 1770(a)(7) by representing that the Products “are of a particular standard, quality, or grade . . . [when] they are of another”.
- c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell them as advertised”.

113. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass suffered harm as a result of Defendant’s violations of the CLRA because they relied on the Challenged Representations in deciding to purchase the Products. The Challenged Representations were a substantial factor. The Challenged Representations were material because a reasonable consumer would consider them important in deciding whether to purchase the Products.

114. **Injunction.** Pursuant to California Civil Code section 1780, Plaintiff and the members of the California Subclass seek an order of this Court enjoining Defendants from continuing to engage, use, or employ the Challenged Representations in the advertising, labeling/packaging, and marketing of the Products for sale. Likewise, Plaintiff and the members of the California Subclass seek an order requiring Defendants to disclose the truth behind the Challenged Representations through an affirmative marketing campaign, disclose the truth whenever asked, and to take all other corrective action necessary to dispel the public misperception of the Products that Defendant intentionally fostered, facilitated, propagated, and advanced through the Challenged Representations.

115. **Section 1782 – Prelitigation Demand/Notice.** More than thirty days prior to the filing of the Class Action Complaint, on January 14, 2021, Plaintiff’s counsel, acting on behalf of Plaintiff and members of the Class, mailed a notice via U.S. certified mail, on the then-registered agent, David J. Shephard, for Defendant New Millennium Concepts, LTD, at the agent’s and the Defendant’s registered addresses at 3301 Airport FWY., STE 103, Bedford TX 76021, regarding Defendant’s violations of the California Consumers Legal Remedies Act and enclosing a draft copy of the originally filed complaint, pursuant to California Civil Code section 1782. *See Exhibit 4* (Jan. 13, 2021 CLRA Demand); *Exhibit 6* (Texas Franchise Tax Board Registration for NMCL

downloaded from <https://mycpa.cpa.state.tx.us/coa/> on January 25, 2021). According to United States Postal Service tracking service, on January 28, 2021, the notice and complaint were refused. **Exhibit 4** (Jan. 13, 2021 CLRA Demand) at pp. 10-11. On February 5, 2021, Plaintiff's counsel mailed, via United States certified mail, the same letter, enclosing the same draft complaint, to Defendant's newly registered agent for service of process, William E. Johnson III, at the agent's registered address at 3616 Maple Avenue, Dallas, TX 75219. *See Exhibit 5* (Feb. 4, 2021 CLRA Demand); **Exhibit 7** (Texas Franchise Tax Board Registration for NMCL downloaded from <https://mycpa.cpa.state.tx.us/coa/> on February 4, 2021). According to the United States Postal Service tracking service, on February 23, 2021, the letter and draft complaint were delivered. *See Exhibit 5* (Feb. 4, 2021 CLRA Demand) at pp. 10-11. The form, content, and delivery of the notices attached hereto as **Exhibits 4 and 5** satisfy subsections (1) and (2) of section 1782(a). *Id.* The notice of violations and demand for remedial action, as of the filing of this Class Action Complaint, did not result in any appropriate correction, repair, replacement, or other remedial action by Defendant, including the remedial action requested therein and set forth under section 1782(c).

116. **Causation/Damages.** As a direct and proximate result of Defendant's misconduct in violation of the CLRA, Plaintiff and members of the California Subclass were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of this Act in the form of damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies.

117. **Punitive Damages.** Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and a nation of consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and a nation of consumers as Defendants were, at all times, aware of the probable dangerous consequences of their

conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and a nation of consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and a nation of consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

XIII.

PRAYER FOR RELIEF

118. WHEREFORE, Plaintiff(s), individually and on behalf of all others similarly situated, pray(s) for judgment against Defendant(s) as follows:

- a. **Class Certification:** For an order certifying this action as a class action, appointing Plaintiff's counsel of record as Counsel for the Nationwide Class and California Subclass, and appointing Plaintiff as a representative of the Nationwide Class and California Subclass;
- b. **Declaratory Relief:** For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- c. **Injunctive Relief:** For an order requiring Defendant to immediately cease and desist from selling the unlawful Products in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;
- d. **Monetary Relief:** For an order awarding restitution, compensatory and monetary damages, and/or disgorgement of wrongful profits permissible and consistent with law;
- e. **Interest:** For an order awarding pre-and post-judgment interest;
- f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs;

- 1 g. **Civil Penalties:** For an order awarding civil penalties;
- 2 h. **Punitive Award:** For an order awarding punitive damages; and
- 3 i. **All Just & Proper Relief:** For such other and further relief as the Court deems just
- 4 and proper.

5

6 Dated: September 16, 2021

Respectfully submitted,

7 **CLARKSON LAW FIRM, P.C.**

8 By: /s/ Katherine A. Bruce

9 RYAN J. CLARKSON

10 SHIREEN M. CLARKSON

11 KATHERINE A. BRUCE

12 YANA A. HART

13 KELSEY J. ELLING

DEMAND FOR JURY TRIAL

Plaintiff(s) hereby demand(s) a trial by jury on all causes of action, claims, defenses, and issues so triable.

Dated: September 16, 2021

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

By: /s/ Katherine A. Bruce

RYAN J. CLARKSON

SHIREEN M. CLARKSON

KATHERINE A. BRUCE

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